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OF
ECONOMICS, POLITICS, AND
SOCIOLOGY

EDITED BY
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SOME ETHICAL GAINS
THROUGH LEGISLATION

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Some Ethical Gains Through Legislation

BY

FLORENCE KELLEY

GENERAL SECRETARY
OF THE NATIONAL CONSUMERS' LEAGUE

New York

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To
C. B. K.

PREFACE

The substance of this volume has grown out of the writer's experience as special agent for the Bureau of Labor Statistics of Illinois for an investigation of the needle-trades in the tenements of Chicago, in 1892; as Chief Inspector of Factories of that state from 1893 to 1897; as agent in charge of the Chicago division of the investigation of the "Slums of Great Cities" for the Department of Labor at Washington; and as Secretary of the National Consumers' League from 1899 to the date of publication; but chiefly as a resident for thirteen years beginning in 1892, first at Hull-House in Chicago and afterward at the Nurses' Settlement in New York. Lest it seem strange that one of the laity should discuss statutes and the decisions of courts of last resort, it may be well to state that the writer has for many years been a member of the bar of Illinois.

The subject matter has been presented in part to the students of several universities and colleges; and published, also in part, in the *Annals of the American Academy of Political and Social Science*, the *American Journal of Sociology*, the *Chautauquan* and *Charities*, to which acknowledgment is due for courteous permission to reprint. Thanks are due also to the West Publishing Company for the text

P R E F A C E

of decisions ; and to patient friends whose searching criticism has led to many modifications both of substance and form.

While the present volume was in press, Mayor Dunne of Chicago appointed to the Board of Education of that city, Miss Jane Addams of Hull-House, Mrs. Emmons Blaine and Dr. Cornelia De Bey. It remains to be seen how far these able and public spirited citizens may disprove the argument advanced in chapter V.

That portion of this book which is of permanent value is to be found in the appendices. These are commended to the careful attention of the reader because, without a full understanding of the judicial decisions thus brought together, it is impossible to comprehend the difficulties which have been overcome in the sadly incomplete process of freeing the conscience of the purchasing public from participation in gross industrial evils ; and to estimate justly the obstacles which still beset the path of the growing body of citizens of the Republic who elect to pursue this discouraging yet indispensable line of civic duty, the permanent establishment of ethical gains through legislation.

FLORENCE KELLEY.

NEW YORK, SEPTEMBER, 1905.

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**SOME ETHICAL GAINS
THROUGH LEGISLATION**

CHAPTER I

THE RIGHT TO CHILDHOOD

It is no part of the aim of this chapter to prove that the right to childhood exists. That right follows from the existence of the Republic and must be guarded in order to guard its life which must perish if it should ever cease to be replenished by generations of patriots, who can be secured on no other terms than the full recognition of the need of long-cherished, carefully nurtured childhood for all the future citizens.

The purpose of this chapter is simply to indicate certain instances in which, the right to childhood having been recognized, an ethical gain has been achieved, and farther gains may be accomplished.

The noblest duty of the Republic is that of self-preservation by so cherishing all its children that they, in turn, may become enlightened self-governing citizens. The children of to-day are potentially the Republic of 1930. As they are cherished and trained, so will it live or languish a generation hence. The care and nurture of childhood is thus a vital concern of the nation. For if children perish in infancy they are obviously lost to the Republic as citizens. If, surviving infancy, children are permitted to deteriorate into criminals, they are bad

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citizens; if they are left illiterate, if they are overworked and devitalized in body and mind, the Republic suffers the penalty of every offense against childhood.

An unfailing test of the ethical standards of a community is the question, "What citizens are being trained here?"

Where young children die by thousands; the ethical standards of the community are, so far, bad. For science has long shown how to minimize infant mortality. The failure of a community to follow the teachings of science in this direction is a moral dereliction of the gravest character. The death from preventable disease of thousands of young children in the tenement houses of the city of New York, occurring year after year, from generation to generation, stamps the ethical standards of the metropolis as bad beyond belief. For the exposure of infants on the highways of China is not more obvious to the people of China, than the preventable mortality of infants in New York City has for years been obvious to the people of the United States. It is, moreover, one of the incredible things of our civilization that this excessive infant mortality, from generation to generation, is left to local boards of health and to local philanthropies, whose inability to cope with it its persistence has long conspicuously proved.

The legislation of the last few years, intended to secure improved housing for the people of New York City, although it is still wholly inadequate, constitutes one of the fundamental ethical gains of

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our generation. For it marks the beginning of that social protection of infant life without which the right to childhood is illusory; and for want of which thousands of potential citizens in the great cities have, within the last half century, been lost to the Republic.

It would seem at first glance to be a universally acknowledged right of the human being to receive during the first months of life food, clothing, shelter and nurture without even passive coöperation on its own part beyond swallowing food, wearing clothing and sleeping in a quiet, warm, clean place. Yet within one generation it has been necessary to enforce with fines and imprisonment, statutes and ordinances for the purpose of stopping large numbers of infants less than one year old from being used to contribute to the income of their owners by being exposed in the arms of begging women upon the streets of the great cities. The colder the night and the later the hour, the more overwhelming the appeal to the pity of the passer-by and the greater the pecuniary value to its owner (not by any means always its mother), of such an instrument for securing income.

Before the enactment of the statute which put an end in New York City to this misuse of infants, a belief was current that, if the public should cease to contribute to their support, starvation might be the alternative for both woman and child. But women and infants do not starve in New York. The suppression of this exploitation of infants is a clear gain for the moral sense of the community, not only be-

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cause the lives and health of the babies are protected, but because a perverted and unwholesome outlet for unreasoning pity is cut off, and a higher form of reasonable care for childhood is substituted therefor.

Following babyhood, the years from the first to the seventh birthday are so far held sacred to sleep, play and rapid growth that most states exempt children during this period from compulsory attendance at school. The belief is generally held, that the strain of school life is excessive for the health and welfare of so many children at this age as to make compulsion of doubtful public benefit.

Young Children working in Tenement Houses.—Yet, in the spring of 1903, a kindergartner in New York City, on missing from her class an Italian brother and sister aged four and five years, and visiting them in their homes, was told by their mother that they could not be spared from their work to go to the kindergarten. They were engaged in wrapping colored paper around pieces of wire, to form the stems of artificial flowers which the family manufactured in their tenement home, the older sisters making the leaves and petals, and the other members of the group forming whole flowers and sprays.

The children were pointed out to the attendance agent who explained that, even under the statute of 1903, the compulsory attendance law exempted the younger child for three years and the older for two, assuming that each would then enter school on reaching the seventh birthday. The factory in-

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spector, when the facts were brought to his attention, observed that the case did not appear to constitute a violation of the factory law, since the children were not receiving wages, and the group at work did not exceed the number authorized under the license to manufacture artificial flowers in their tenement home.

The question then arose whether such employment constituted cruelty under the statutes of New York. The danger attending taking the children and their parents into court upon a charge of cruelty was, that it might be found that this parental exploitation of young children within the home did not technically constitute cruelty in the judicial sense; and such a decision might then be construed by the colony of artificial flower makers as approval of similar employment of small children upon a scale even larger than at present. Or, such employment might be held to constitute cruelty, the children might be removed from the custody of their parents and sent, perhaps at the cost of the city, to one of the subsidized sectarian institutions, and a whole new series of hardships thus caused, not less grave than those already suffered by the children.

Such exploitation of very young children within the family circle is practised whenever manufacture in tenements is tolerated. These children are types of employees in New York, Chicago, Philadelphia, and all other cities in which tenement dwellings are turned into workshops. This form of domestic overwork of little children can be eliminated by the effective prohibition of manufacture in the tene-

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ments (a measure sure to be enacted within a few years in the interest of the public health) and in no other way. Until this prohibition is enacted and enforced, there will be, wherever the needle-trades and other industries are carried on in homes, virtually no lowest limit above the age of three years for the employment of children in families. For children can pull out basting threads, sew on buttons, paste boxes and labels, strip tobacco and perform a multitude of simple manipulations as readily as they can learn the kindergarten occupations.

In Boston, the rigorous enforcement of the licensing-laws applied to homework has partially restricted this form of exploitation of young children; and has revealed the interesting fact that the ethical standard of the people of Massachusetts is higher in two important respects than that attained by other manufacturing communities. For the young children are incomparably better protected against domestic overwork by the partial restriction of manufacture in homes; and the officials appointed to watch over tenement-house manufacture are the only ones in the United States who know from ten years of experience that they are in no danger of being removed from office because of faithful performance of their arduous and often dangerous work.

Young Children in Domestic Work.—Far more difficult to reach by statute is the oppression of little girls under the burden of household drudgery at cost of school attendance. The Little Mothers' Association registers one of the bitter ironies of child

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life in New York City. The girls whose dreary lives it cheers are under the legal age for working for wages. Many of them attend school just enough to save their parents from the penalties attaching to keeping a truant in the family, but so irregularly that progress with the class is impossible and school life is one long discouragement. For these children, whose exploitation is largely due to sheer parental shiftlessness and selfishness, that new provision must in the long run prove a godsend which now requires a child before beginning to work for wages, to show that it has completed the curriculum of the first five years of the public schools and has, within the last preceding school-year, attended school one hundred and thirty days. This measure places a premium, in the shape of wage-earning capacity at the fourteenth birthday, upon steady progress in school and, therefore, upon regular attendance. When this fact penetrates the minds of the parents, the "little mothers" will doubtless find less opposition at home to their efforts to escape from the baby, the washtub, and the scrubbing brush, and to take refuge in the schoolroom.

The statute thus reënforces parental duty and stays the pressure of drudgery upon defenseless children within the family. Unfortunately, it is too slight and indirect. The "little mothers" need direct help and protection almost as much as the tiny makers of artificial flowers in the tenements. The next step might well be the adoption of an objective standard applied to the child herself. If it were required that a girl must weigh eighty pounds and

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measure sixty inches in height, the test to be made with scales and measuring rod in the school, besides being able to read fluently and write legibly in the English language, before leaving school, the danger of oppression of little girls within the family circle would be greatly reduced.

No modern community recognizes the old *patria potestas*, the Roman right of the father to put his child to death. But in the intimate circle of family life there lingers deeply rooted the belief in the right of either parent to exploit childhood for money, or for personal relief from work by the substitution of the child in the performance of domestic tasks. And the public conscience is slower to recognize the need of intervention in this than in any other form of cruelty.

With the statutory prolongation of childhood in the form of child labor laws, there emerges the need of assuring to the children the practical benefit due them with their legal immunity from work. In the Republic, childhood must be sacred to preparation for citizenship. Hence the public schools offer instruction in the interest of the community. But for the children here under discussion, mere offering is not enough. There must be compulsion incarnate in the attendance agent. Through this official the community enters the home, as it enters the workshop, the store and the factory, to enforce upon the adult the child's claim to this high privilege. There is no longer discussion with the parent as to the advantage to himself accruing from the education of

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his child. The child's right has been recognized and made a part of the life of the community.

This process of defending the child, by reason of its future citizenship, from ignorance imposed by the greed or thoughtlessness of parents has, since 1903, gone farther in the State of New York than in any previous year or any other state. For in New York, under the statute of 1903, a child must not only reach the fourteenth birthday and the normal stature of a child of that age (so certified by a special officer of the board of health appointed for the purpose) before beginning work in manufacture or commerce; it must also have been instructed in reading, writing, spelling, English grammar and geography, together with the fundamental operations of arithmetic including fractions, and *must show* that it can read fluently and write legibly in the English language.

An unforeseen and welcome result of this provision is the immediate discovery on the part of many Italian and Russian immigrant families that it is no longer profitable to import half-grown and illiterate young relatives from Europe; since such young importations now require about two years of steady attendance at school before they can be made pecuniarily profitable to their importers. Thus one of the ugliest growths of the padrone system of immigration is quite incidentally cut off at the root by the statutory protection of children from work while they remain illiterate.

Children in Street Occupations.—Within comparatively few years, little girls offered violets for

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sale in the streets of New York as they still offer in the streets of many cities flowers, pencils, chewing gum and other small articles. Thoughtless persons encouraged them with gifts as well as purchases, assuming perhaps starvation as the alternative to this ruinous employment. Now, happily, the penal code prohibits under heavy penalty all employment of this kind for girls under the age of sixteen years. In the interest of morals and decency, self-support by street-peddling is forbidden to girls six years longer than newspaper-selling is prohibited to their brothers, although the recent investigation of the New York Child Labor Committee justifies the belief that a similar prohibition, on the same grounds, is no less needed for boys.

Among American cities, Boston, New York and Buffalo are dealing systematically with very young children working as newsboys. In all three cities attempts are made to eliminate newsboys under the age of ten years. Merely to state this would seem to justify the effort and suggest farther restriction. Yet, in 1903, a representative of the New York Society for the Prevention of Cruelty to Children appeared before the Senate committee sitting at Albany, and protested against the enactment of a measure which proposed to go one useful step farther and extend the prohibition of street selling to the twelfth birthday.

In many cities, tiny newsboys may be seen on the streets at any hour of the day or night. Wherever the subject has not been closed by a prohibitive statute, that perverted reasoning is still widely ac-

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cepted which assumes, quite without foundation for the assumption, a widowed mother or a disabled father for every such diminutive worker, and unhesitatingly places the burden of the decrepit adult's maintenance upon the slender shoulders of the child. Over against the prevalence of this unfounded assumption, the sweeping prohibition of street work for children under the age of ten years registers a distinct ethical gain. It restores the burden of support in early childhood to the parents or to the community where it properly belongs.

A case arising in New York City under the "newsboy law" illustrates the point. A child was arrested charged with offering to sell papers without wearing the badge required by law. He was nine years and six months old. On the following day several newspapers printed headlines of which the following is typical: "Tiny Breadwinner arrested for Selling Papers." Investigation showed the father to have deserted his family, the mother to have become insane, and the three children to have fallen into the direst need. Thanks to the "newsboy law," immediate attention was drawn to them, the mother was taken to a hospital, the children were provided with homes, and the search for the absent father was begun. Without the law, what would have befallen the family? And what would be the ethical standard of a community which allowed the support of a family consisting of an insane woman, a child younger than himself, and an infant, to devolve upon a boy of nine years?

For more than one generation, it has been almost

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invariably assumed that there must be little newsboys, and that they must be objects of charity. The two facts, that they are regarded with surprise and disapproval by European visitors who investigate our educational theories and practise, and that the street trades uniformly contribute a wholly undue share to the population of our reformatories and industrial, truant and parental schools, have been ignored.

There have been newsboys' homes, lodging-houses, banks, and clubs; newsboys' picnics, public dinners, treats and even, from time to time, a theatrical performance for newsboys. The simple device of prohibiting the work of tiny children and making the privilege of selling papers on the streets, out of school hours, depend upon the good behavior and regular attendance of the candidate at school, registers a marked gain in reasonable kindness of the communities which have entered upon this humane course of action.

The boys in New York, Boston and Buffalo, who wear badges, indicating their right to sell papers, are now school boys authorized by their parents and the board of education to work, out of school hours, until ten o'clock at night. Every one of them is vouched for by a parent or guardian whose name and address is known to the board of education. There are no waifs or strays among them. They are not legitimate objects of pity or of charity. They are school boys in good standing. Just in proportion as the newsboy law is enforced, can a cheerful answer safely be given concerning them

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to the question, "What kind of citizens are being trained here?"

In these three cities, the next step will doubtless be taken in the direction of raising the age for beginning work to twelve years and restricting the working day to the hours between seven in the morning and seven at night. Ten o'clock at night is too late for children under the age of fourteen years to be at work upon the streets, and the law of Illinois demonstrates that seven o'clock is a feasible limit for the work of children under sixteen years in manufacture and commerce. Surely it is not too narrow a limit for children under fourteen working in the streets.

Telegraph and Messenger Boys.—A similar gain is greatly to be coveted for the telegraph and messenger boys who share with the newsboys the life of the streets and who have long been surrounded by the same sort of glamour in the public mind. Carrying messages, like selling papers, has seemed to the employing companies and to the thoughtless public to be "boys' work," as distinguished from men's work, because boys can do it, and because they can be obtained more cheaply than men.

The test of the work, however, should be not whether boys can do it, but what it does to boys. Many occupations are injurious to children almost in proportion as they seem, from the commercial point of view, fitted to the abilities of children. To twist colored paper around pieces of wire in the manufacture of artificial flowers is within the power

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of a child of four years. And the labor of such children can be obtained virtually gratis by the employer under the system of manufacture in tenement-houses. This portion of the work seems, therefore, to the employer to be properly "children's work" not "women's work." But to be kept steadily at work at that simple manipulation is ruinous for the body and mind of a young child, and, in the interest of the children viewed as future citizens, is to be utterly condemned and prohibited. In the same way, a girl of ten years can carry a baby in her arms, scrub a floor, and wash plain garments quite clean. But the girl who does nothing, all day long, day after day, but hold a heavy baby and carry it up and down stairs in a tenement-house; or who habitually lifts baskets of clothing, or kneels on a damp floor, gets off easily if she escapes lifelong curvature of the spine, or serious internal disorder, or tuberculosis, that blight of the working children.

So the very out-of-door variety and facility of the work of the messenger contributes to make the work unfit for young lads, almost in proportion as their youth, spryness and readiness to work for small wages make them appear to the employing company and the uncritical observer especially adapted to the occupation.

Granted that one messenger or telegraph boy in a great city may have risen to a post of responsibility just as one newsboy in a thousand may have risen to distinction or to fortune, the public mind has been far too ready to assume the *carrière ouverte aux talents* for all these children; and sadly

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slow to perceive the truth which the juvenile courts are now revealing, that like the newsboys the messenger boys have long furnished a large contingent to the population of the truant-schools, the parental schools, and the reformatories.

Every judge of a juvenile court, at an early stage of his experience with delinquent boys, becomes impressed with the unfitness of work upon the streets as messengers and telegraph deliverers, for children. A judge told the writer that one-third of all the delinquent boys brought before him had, at one time or another, served the public as messenger boys. He regarded this as the most injurious, from the point of view of morals, of all the occupations open to children. Every reformatory institution which keeps adequate records of the previous history of the boys committed to its care, can shed a flood of light upon the demoralization of lads due to this service upon the streets.

The attention of the writer was first drawn to the injurious character of this occupation for young boys by the experience of a lad who was taken into service as a messenger in the morning and was sent, at noon, to the post-office with \$1.70 to buy stamps for a great mail-order establishment. Intoxicated by the possession of a sum greater than he had seen in all his life with its meager supplies of money, the boy showed the notes to another lad upon the street, who suggested that instead of going to the post-office, the messenger should go to the races. Together they spent the afternoon betting at the race-tracks. The following morning the messenger

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passed from the ranks of the working children, in which he had been enrolled for one ruinous day, to those of the juvenile criminals recorded in the county jail.

The temptation involved in handling precious possessions not his own besets the messenger boy throughout his career. And the contact with disreputable people is not confined to chance acquaintances upon the streets, but inheres in the work itself, thousands of messages to such persons of both sexes being delivered every year by young lads who are constantly sent, in the way of business, to places of the existence of which more fortunate children are carefully kept in ignorance. The judge who presides over a justly famous juvenile court told the writer that in his opinion two-thirds of the messages delivered after eight o'clock at night in his city were carried by children to places of bad character.¹ According to the penal code of New York messenger boys may be sent to the door of places to which no other child can be sent without involving the sender in the danger of criminal prosecution. Surely cynicism can go no farther than this!

All the circumstances attending the work of telegraph and messenger service render it especially

¹ One of the curiosities of legislation is that provision of the penal code of New York which reads as follows: Penal Code—Sec. 292a (Laws 1893, Ch. 692): "A corporation or person employing messenger boys who knowingly sends or permits any person to send any messenger boy to any disorderly house, unlicensed saloon, inn, tavern or other unlicensed place, where malt or spiritous liquors or wines are sold, on any errand or business whatsoever, *except to deliver telegrams at the door of such house*, is guilty of a misdemeanor, and incurs a penalty of fifty dollars, to be recovered by the district attorney."

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unfit for young, growing boys. The irregular hours, and the still more irregular meals, picked up in the intervals of message serving and consisting commonly of bread or cake with the vilest coffee, contribute to sapped vitality and broken health. Such meals foster the craving which seems universal among workers upon the streets, for cigarettes and liquor. The incessant temptation to overcharge is in turn enhanced by the longing for these stimulants. The temptation to purloin money and to overcharge makes thieves of hundreds of children. The ease with which overcharges may be collected and the relative safety from detection sap the habit of honesty in nearly all messenger boys. The writer has had wide experience of working boys and has never known a messenger who did not, sooner or later, succumb to the temptation to overcharge. How completely a matter of course it is in the minds of the children, was shown by a boy who came to the head of a settlement in New York to ask her, in all simplicity, to help in getting him restored to the Lower East Side, whence he had been recently transferred to a district of offices in Broadway, where everyone, even the office boy, knows the tariff of charges for delivering messages. Among the women of the foreign colonies he had been able to overcharge at discretion. After being transferred, these illicit gains were cut off and he felt himself aggrieved by the reduction of his receipts, and set promptly and frankly about securing his restoration to the field of his former dishonesties, which it never occurred to him either to conceal or deny.

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It is one of the ironies of our treatment of our future citizens that all the disadvantages of the messenger service are intensified at the Christmas holiday season. Work is brisker, inexperienced children are taken on, bundles are larger and heavier and correspondingly more wearisome to carry than at other times. Or they may be smaller, more precious and, therefore, more tempting to purloin. Waiting at the doors of dwellings is trying in the cold of Christmas days; servants are apt to be slow because of the unusual demands upon them; the contrast between the comfort, perhaps the splendor, of the interiors seen by glimpses and the meager surroundings and celebration at home—all these things make the Christmas experiences of the messenger boys bitter rather than cheering. On the other hand, people in general are inclined to be more confiding than usual; overcharging is easier, the fear of detection is even remoter than at other seasons.

All the foregoing disadvantages attach to the night service with even greater force than to the work by day. After 7 P. M. the work of the messenger service and telegraph delivery is peculiarly unfit for children and should be performed by men, never by minors; least of all by boys between the ages of ten and sixteen years. Yet it is these young lads who constitute the rank and file of the service at the present time; many of them only nominally fourteen years old while really much younger.

One evening, as the writer was leaving home to go to the railway station to take a midnight train, a

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boy eleven years of age brought a telegram for a member of the family announcing the successful performance of a surgical operation upon a relative in a distant city. As the boy's route to the office involved passing the station, the writer suggested walking together. In the course of the conversation the boy said: "She didn't take on at all about her message, that woman didn't. The last message I carried was to a laundry and the girl was the cashier. When she seen her message she fell clean off the stool on the floor in a fit. Her mother was dead and no previous notice." He referred to himself as one of the "death-message squad" and explained that between 11 P. M. and 5 A. M. the messages sent out from the office in which he was employed were chiefly "death-messages" and "come immediatelies." On reaching the station, just before midnight, this child of eleven years said good-night and continued his walk across the Chicago River to one of the worst and most notorious regions of the Levee in which the office was conveniently located.

The stirring opportunities afforded by the life of the streets for boys at the age of the keenest thirst for adventure, together with the absence of personal oversight, conspire to lure the messengers to commit minor offenses. All these considerations taken together have effectually convinced students of the child-labor problem that the messenger and telegraph delivery service rank among the boy destroying occupations. Yet one telegraph company in the United States is probably the largest single em-

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ployer of boys in the world, having had on its payroll in New York City alone, in 1902, 6,000 boys in order to keep its daily working force at 2,000 boys.

Let us assume that, in spite of all its disadvantages, some rare boy survived a long term of employment in the telegraph and messenger service and emerged with digestion unhurt by irregular meals and coffee drinking; nerves sound in spite of lost sleep and cigarette-smoking; character untainted by evil companionship and the overwhelming temptation to dishonesty. What has such a boy to show for the years he has spent in delivering messages? He has no trade, no craft, no skill of any kind, no discipline of mind or body to fit him for rising in any direction. The irregularity of his work has unfitted him for any sustained effort when he has passed the age for accepting children's wages. One of the problems of the settlements is to find work for boys who have outgrown the messenger's uniform. The lads have learned nothing which is of any value to them. There is no versatility in them which might make them desirable employees in the hobble-de-hoy age. Their eagerness to make a record of speed and promptness has all oozed away. They are no longer dazzled at the prospect of earning \$4.00 a week. They know most exactly the purchasing power of the wages they are likely to receive, and balancing the fatigue and exertion against the pay, they simply sit still and wait for something to turn up, rather better pleased if nothing can be found

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for them to do. Not every boy is morally ruined by this work; but the earlier he enters upon it, and the longer he remains in it, the greater the probability of his ruin.

Every consideration adverse to the employment of boys as messengers holds with added weight against the employment of girls. On grounds of health the exposure to all sorts of weather is even worse for girls than for boys. Carrying heavy packages is most injurious for girls, and this is one of the purposes for which messengers are frequently called. Exposure to contact with all sorts of people is, if possible, worse for girls than for boys, and most undesirable for both. From the point of view of health and morals the employment of boys is sufficiently bad; and in the opinion of those who are best qualified to judge, should be discouraged in favor of the employment of men.

It is reported that President Eliot once notified the Harvard Square office of the Western Union Telegraph Company that the rule of the college must be observed which forbids women without escort to visit the dormitories. The occasion of this notice was the experiment which this company had been making in several places, Cambridge among the number, with employing girls instead of boys as messengers. As most of the business of the Harvard Square office is done with students, the experiment at that point was immediately abandoned. Everywhere, the consumer can do what President Eliot is reported to have done, namely, make the conditions upon which the companies can

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retain the patronage and custom essential to their business. To do this, however, the customers must act in large numbers. It is because President Eliot speaks for hundreds of patrons that his decision is final for the company. It rests with the friends of the children to urge upon the general public the feasibility of selecting the kind of messengers to be employed. Certain business offices in New York City are already doing this. They have notified the local messenger service that small boys will not be accepted, messages and packages will not be entrusted to them. To these customers, the companies send only large boys. In the same way, persons who telephone calls for messengers, can, by taking thought, stipulate for a large boy. It is particularly important to do this at night.

When a sufficient number of persons register public opinion in this and other practical ways, the tiny messenger boys will disappear from the streets of the cities as the infants misused for begging purposes, the shivering little girls offering violets for sale, and the baby newsboys, have vanished from the streets of New York City. Legislation was required to banish each one of these groups of little victims of the streets, and before legislation could be enacted, and enforced, public opinion had to be educated. The future citizen most in need of vigorous enforcement of existing statutes and of strenuous public and private protest against his present way of life, is the little messenger boy. On no one does the denial of the right to childhood act more cruelly than upon him.

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Hitherto, only initial steps have been taken in the direction of legislation. Ohio prohibits the employment of boys under sixteen years of age, and of girls under eighteen, after 7 P. M. But the law is not, in general, well enforced, and the writer has seen young boys and has heard upon trustworthy authority of young girls being employed, in that state, late at night. Illinois prohibits the employment of boys and girls alike after the hour of 7 P. M. In New York State the enforcement of the law for the protection of the messenger and telegraph boys is, unfortunately, left to the local boards of health, and the statute is, therefore, largely nugatory.

With the effort to secure better statutory protection of the children, there should be a general movement for the employment of men in these capacities. Why should telegrams, messages and packages be entrusted to persons of less efficiency than the letter carriers employed by the government of the United States? Letters are usually less urgent than telegrams, less valuable than packages. Why, then, should the public consent to be worse served in the delivery of telegrams, messages and packages than of letters? Even in the delivery of letters, children are sometimes employed by the United States post-offices, indirectly through contracts with the messenger companies, which send out pitifully small boys at all hours of the night to carry letters bearing special delivery stamps. It is a perverse practise which here also entrusts the especially urgent letter to a bearer of less than the ordinary

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trustworthiness, a practise against which the liveliest protest might well be made wherever it occurs.

Wherever there is a one-armed man out of employment who possesses the other qualifications for the messenger service now ordinarily offered by children, the advantage to the community derivable from giving the opportunity for a livelihood to such an unfortunate is so obvious that it would doubtless be admitted by everyone. The need here, however, goes much farther than this, embracing the employment of sound men as well as of one-armed men, in the interest incidentally of the efficient service of the community, but primarily in the interest of the children, the future citizens whom the Republic cannot permit to be sacrificed in the performance of tasks intrinsically unfit for childhood.

Children in Retail Trade.—Boys who enter upon employment in retail trade at the age of fourteen years, are at the foot of the ladder of commerce upon which some of them will rise to competence and success. In New York such boys must have attended school one hundred and thirty days during the last preceding school year, must have received instruction in reading, writing, spelling, geography and English grammar. They must be familiar with the fundamental operations of arithmetic, including fractions. They must not only prove themselves fourteen years of age by producing a birth or baptismal certificate, but must be of the normal development of children of that age and in good health, in the opinion of the examiner of

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the board of health, who issues the certificates without which they cannot be legally employed. Their working day is limited to nine hours and must be arranged to end not later than ten o'clock at night. Boys who meet these requirements but have not yet completed the work of the first eight grades of the public school, must attend night-school six hours a week during sixteen weeks each year until the sixteenth birthday, unless the curriculum is meanwhile completed.

This is believed to be the most enlightened statute yet enacted for the protection of boys entering upon employment in commerce; and so far as the issuance of certificates is concerned, it has been administered conscientiously and effectively. During the months of October and November, 1903, approximately 2,000 children who applied to the board of health of New York City for certificates were refused them, either because they could not prove that they were fourteen years of age, or because they did not meet the educational requirements. Unfortunately, there is as yet no appropriation made by the city for the salaries of mercantile inspectors to enforce the law by following the children into the stores frequently and regularly. Since, however, the names and addresses of the children, with the statement whether or not papers have been issued, are forwarded by the board of health to the school officials, the lack of mercantile inspectors is in part compensated for by the search made by the school authorities for children thus shown to be out of school.

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It is probable that there is a close connection between the unusually high wages paid to children in retail trade in New York and the restrictions upon their work, both being in excess of the wages and restrictions common elsewhere. Children of the grade of intelligence here described are worth better pay than younger, more ignorant children; and when they meet all the requirements of the law and have their papers in order, they are at a certain slight premium compared with children of the same age in communities where the workers are left subject to the unrestricted competition of younger children.

On the other hand, such restrictive legislation tends to stimulate the use of systems of mechanical cash-carrying; for the higher wages of the protected children are worth saving. This is clear gain for the merchant, the children and the community; for the work of cash-children is the least desirable of all the phases of retail trade. The act of carrying cash is in itself a gross temptation, sharply accented by the suddenness of the child's transition from the meager possessions of the tenement-house family life to the bewildering richness of a great store. The amounts pilfered by children are usually so trivial that it is rarely thought worth while for the employer to prosecute the offender. A child who has been guilty of petty thieving is usually dismissed and replaced by another. But in the life of the tenements and the stores nothing is hidden; and on the following day all his associates know what has happened and the

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brand of the thief is upon the offender. Every reduction in the number of children required for the performance of this work is, therefore, a gain for the morals of the working children.

The best measures yet enacted for the protection of girls in retail trade are wholly inadequate. The law above described as applying to boys in New York applies to girls also, except that girls are not required to attend night school. But this is not enough. In the interest of the public health and morals there is quite as good ground for prohibiting the employment of girls under the age of sixteen years in retail trade as in peddling in the streets. Girls cannot be kept in the close air of stores eight or more hours a day, without suffering a loss of that vitality which it is one of their most important functions during the years between ten and sixteen to store up for the uses of motherhood later on. The disadvantages arising from confinement in close air increase in proportion as growing girls are kept standing, or are subjected to crowding and excitement.

Girls are, of course, subjected to exactly the same temptations to pilfering as boys. Moreover, they are more at the mercy of the men under whose direction they work. An immoral floorwalker or head of a department possesses appalling power for evil over the lives of the girls who are subject to his direction. The public at large enjoys the freedom of every city store; and the position of little girls offering violets to all passers on the streets, is essentially not very different from that of the

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young employees in retail trade. There is also enforced association with older employees who may or may not be of good character, and the readiness of girls at the most impressionable age to adopt the tone of the more striking among their older associates. Finally, there is for young girls none of the steadying influence that arises for boys out of the prospect of moving upward in the line of promotion. For girls the work which they perform before the sixteenth birthday is usually a makeshift for the sake of the immediate weekly wage which they earn at quite as great risk to their future as the messenger boys. On behalf of the girls under the age of sixteen years employed in retail trade only the most adverse reply can be given to the question, "What kind of citizens are being trained here?"

Meanwhile, pending the enactment of a measure which shall place retail trade in the same category as street peddling for girls under the age of sixteen years, the shortening of the hours of work by the statutes of 1903 in New York and Illinois marks a substantial gain.

So far as they are enforced, they will make an end of such spectacular cruelty as the writer witnessed, in December, 1902, a few weeks before their enactment. Returning late at night from the long rehearsal of the Musical Arts Society, at Carnegie Hall, some ten days before Christmas, and forced to wait for a car at Broadway and Grand street, she found there at eleven o'clock a dozen little girls, between ten and fourteen years of age. They proved to be neighbors and eagerly poured forth

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the story of their day. They had reported for work at 7:30 in the morning, the stores opening at eight o'clock. They had had scant time for luncheon, and worked again until supper time. Then, in one store they were given ten cents each and in another store a meal ticket. Several meal tickets proved worthless because there was nothing left to eat at the late hour at which the children were allowed to stop working. After supper, all had worked again until ten o'clock when they had been sent home. After waiting half an hour for a car, it was proposed to walk home together; but one little girl sat down on the curb stone, crying and saying that she could not walk, if she never reached home. The others stayed with her in the cold of December with midnight approaching, little victims of the cruelty that, year after year, travesties the Christmas season.

A boy well known to the writer described as follows his experience of the shortened working-hours: "I fill a bin with packages, ready for the driver to put on his wagon. I begin at seven and work all day. A wagon goes out at eight in the evening. Then I fill my bin for the driver to put in his wagon, ready for the morning, the first trip. I stay by the bin until ten, waiting for the last parcels bought just before closing time to come down to me. When the store closes at six, the last of these come down by ten. Then I can go home. When the store used to be open until eight I went home at midnight. When it was open until ten, I went home at two in the morning. But when I

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am ready to go home, the little gatherers come around, gathering up paper, string, broken toys, and all the rubbish that accumulates on the floor in the holiday rush. When the gatherers have finished, the scrubbers come along and clean the floors, and the gatherers generally go home about the same time as the scrubbers, two hours later than I go home."

Henceforth, no child under the age of sixteen years can be legally employed after ten o'clock at night in New York or after seven o'clock in Chicago. The change for the children employed in the retail stores in Chicago, to be derived from this new statute, is illustrated by another winter-night observation of the writer made some years ago when returning from the Auditorium after the usual Christmas rendering of the Messiah. The oratorio had been long, there had been delays, and it was nearly eleven o'clock when the cars turned the corner at Adams street to go west and then southward. There were the usual grip-car and two trailers of the cable-train then used on the streets of Chicago. All were quite empty when they stopped. When they started again, all were crowded with children and half-grown girls from the great department stores. Many of the children could not get inside the cars, but stood huddled on the platforms and the grip-car, exposed to the falling snow after their long day in the overheated air of the stores. Some of the little girls fell asleep, others clung to straps, laughing or crying hysterically. All had gone to work in the early morning;

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all expected to return to work—some at seven o'clock the next morning, others at eight.

The writer and her companion were the only adult passengers, and when they left the car the weary children continued their journey with only the gripman and conductor. Some of them would go to the end of the car-route, and then stumble wearily through deep snow in the winter midnight far across the prairie to their homes.

Children in Manufacture.—The presence of children in mills began with the division of labor, and the development of machinery driven by steam. It was a feature of the civilization of the nineteenth century, but reached no large dimensions in the United States before 1870. Since then it has increased and continues to increase wherever no counter order is given by restraining laws rendered effective by alert and organized public opinion.

It has been shown that the end of childhood and the beginning of toil is an undetermined epoch. Even where, as in New York and Illinois, manufacture and commerce are closed to children under the age of fourteen years, street-life, tenement-work and the drudgery of the "little-mothers" may occupy the earlier years. In less enlightened states, manufacture and commerce are open to children at an earlier age, until in Georgia¹ there is no statutory protection.

As to the age at which children may begin to work in manufacture, the evolution of the public conscience may be observed at every stage, from

¹ See Appendix I.

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the utter absence, as in Georgia, of all statutory care even for children aged five, six and seven years, to the highest point yet achieved of carefully cherished childhood under the statutes of New York and Illinois.

In 1903, the legislature of Georgia met twice and at each session refused after long deliberation to enact a statute restricting the employment of children in cotton mills. There is, therefore, no limit below which children may not be employed if manufacturers can make use of them. The writer has seen children at work in a Georgia mill who were pitifully stunted if they were eight years old. There is, in Georgia, no restriction upon the hours of work, and usage calls for eleven hours in twenty-four. It was, therefore, due merely to the good will of their employer, that these little boys and girls were not required to form part of a shift of workers at night. Georgia, by these repeated votes of her legislature in 1903, has taken a stand ethically lower than that of England in 1802, when Sir Robert Peel's act was adopted; although industrially Georgia is one of the most modern of states if tested by the purely material standard of the equipment of her mills.

The same Georgia legislature of 1903 which refused to prohibit the work of children less than ten years of age, enacted a law declaring any man a misdemeanant who permits his young children to work in a mill while refusing work which may be offered him. Cases arising under this law, however, seem already to have demonstrated its futility

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as a measure for the protection of the children. For the fathers arraigned under it found no difficulty in proving that they occasionally did some casual work, enough to exempt them from all penalties.

Thus Georgia ranks with Oklahoma in placing no restriction upon the exploitation of children. Oklahoma, however, has no manufacture and little commerce; while the cotton mills of Georgia are doubling their spindles with bewildering rapidity, and new villages grow up along the line of the Southern Railway almost between spring and autumn.

South Carolina has adopted a curious compromise according to which children under the age of eleven years were not to be employed after May 1st, 1904, and children under the age of twelve years not after May 1st, 1905. There are such exemptions in favor of widows, whose children may work on reaching the tenth birthday, as may reasonably be expected to induce many wives of worthless husbands to pose as widows among the shifting populations of the mill-villages.

Alabama prohibits the employment of children in cotton mills before the twelfth birthday (always with the exception of orphans and the children of widows) and restricts work at night expressly to those children who have reached the age of thirteen years. Between the thirteenth and sixteenth birthdays both boys and girls may legally work eight hours at night.

Similar laws, but without the restriction upon night work, are in force in North Carolina, Vir-

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ginia, West Virginia and Missouri. Louisiana prohibits the employment of girls in mills before the fourteenth birthday, but permits boys to work at the age of twelve years. Texas prohibits the employment of illiterate children under the age of fourteen years; those who can read and write may work at twelve, both boys and girls.

The practical value of all these laws to the children and to the community is slight because there are neither inspectors to enforce them, nor schools to receive the children if they were effectively banished from the mills. The chief worth of the statutes is that they register the growing conviction of the community that children must receive some modicum of protection.

For the children they are not wholly valueless, because when a measure for the safeguarding of childhood is enacted, certain employers obey it simply because it is there, irrespective of penalties and inspectors. Less scrupulous employers also obey it in many cases because they are advised by counsel that they will be liable to the child's family in heavier damages in case of accident to a child employed illegally, such employment constituting in itself negligence on the part of the employer, while a child under the legal age for employment may be held by a court to be incapable of contributory negligence. In still other cases, accident insurance companies decline to insure children employed in violation of the law. Hence a body of usage begins to form as soon as a child labor law is enacted; and in the long run, only the ignorant and the

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viciously contumacious have to be brought to obedience by the prosecuting and enforcing authorities.

From this point of view these recent statutes of Alabama, North and South Carolina, Texas and Virginia are to be regarded as cheering ethical gains; for they mark a change in the public conscience with regard to the sacredness of childhood and promise a continuous process of education of parents and employers such as has taken place in several Northern states during the past thirty years and is still going forward.

History repeats itself in the exemptions embraced in the new Southern laws. It was as recently as 1903 that New Jersey and Wisconsin repealed provisions authorizing the employment of orphan or indigent children earlier than other children. Wisconsin had formerly placed the invidious task of granting permission for such children to work upon the county judge, and New Jersey upon the factory inspector. Judges are but indifferent investigators of indigence, and rely in these cases upon the opinion of the factory inspector, who is thus distracted from his legitimate duty of inspecting factories to inspect family relations and poverty. In Kentucky this evil provision still exists, but public opinion is so thoroughly aroused in favor of abolishing it, that repeal in the near future seems inevitable. Under the exemptions embraced in the new Southern child labor laws, the tendency for every child deserted by its father, and for every illegitimate child who would be a cost to the community, to be accounted an orphan and, therefore, liable to

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exploitation in a cotton mill, may reasonably be expected to manifest itself.

At the opposite end of the scale of morals and enlightenment from the action of Georgia, is the recent history of legislation in Illinois, which exhibits an interestingly rapid gain in recognition of the claim of childhood to immunity from responsibility of an industrial and financial nature. Before 1885, the industrial demand for the labor of children existed in that state only to a limited degree. Children were available for the street trades, the retail stores, offices, etc., but manufacture was of a character offering little opportunity for the use of children's labor. Textile industries were almost unknown and only the glass-bottle trade found boys indispensable. In 1894, the first full year in which the inspections were made under the state factory law of 1893, there were found at work in the factories and workshops, 8,130 children under the age of sixteen years. In 1895, the number rose to 8,624. In 1897, the statute was extended to embrace children engaged in commerce, and the factory inspector's report for 1902 showed more than nineteen thousand children at work under the age of sixteen years, in manufacture and commerce alone, not including the children in mines and the streets of the cities.

The first child labor law of Illinois prohibited the employment of children under the age of fourteen years in mines. This was enacted in response to the efforts of the miners' unions. It provided for no exemptions. This effort of the miners has

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achieved a substantial gain for the ethical activity and perception of the people of Illinois. No one would now venture to argue in favor of employing young boys under ground in that state, while boys of twelve years may still legally work in the coal mines of Kansas, and in all mines in Iowa, Missouri and North Carolina. In 1890, an ordinance of the City of Chicago prohibited the employment in manufacture or commerce of any child under the age of ten years "unless there be dependent upon such child any sick or infirm parent or adult relative." The legislature of 1891 prohibited the employment anywhere in the state of a child under thirteen years of age with the same startling proviso. In 1893, all employment of children under the age of fourteen years was prohibited in manufacture but permitted as before in commerce. In 1897, the minimum age for employment in commerce was raised to fourteen years and thus made uniform with the minimum already established for mining and manufacture. All exemptions were abolished. Tested by experience the administrative part of the statute proved weak and again comprehensive amendments were adopted in 1903. As the law now stands, a child under the age of sixteen years may not work after seven P. M. nor longer than eight hours in one day and forty-eight hours in one week. Nor may a child under the age of fourteen years be employed or permitted or suffered to work in mining, manufacture or commerce. These provisions are unspoiled by any exemptions whatever. Moreover, a child under the age of

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fourteen years must attend whatever school he is in throughout the full term, comprising a fixed minimum of 110 days in the school year.

Illinois has thus faced, more boldly than any other American state, the fact that children to the age of sixteen years are different from adults and must be differently treated in industry. The new laws throw upon the community the burden of maintaining all those sick and disabled parents and dependent adult relatives whom, as late as 1890, the state entrusted to the precarious efforts of the children ten years old or less.

A significant measurement was immediately made of the resultant burden to the community. Miss Jane Addams, of Hull-House, asked the Chief Inspector of Factories to report to her the names and addresses of all children under fourteen years of age who had been employed under the more lax old law and were now deprived of employment by the enforcement of the more rigid new law, and whose mothers were widows. This was done. In the period between July 1st, when the law took effect, and October 26th, fourteen cases in Cook County, which embraces Chicago, and six cases in the rest of the state, had been found in which this form of hardship appeared to occur. The twenty families were investigated with the utmost care, in coöperation with the Bureau of Charities of Chicago. In the end, three families in Cook County and five in the remainder of the state proved to be in need of the equivalent of the wages which a fatherless child less than fourteen years of age had been earn-

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ing. The task remained of raising money to be used as scholarships for these children until they should reach the fourteenth birthday. The wages earned by the children were from two to four dollars a week; and they ranged in age from twelve years and six months to thirteen and a half years. The period for which the scholarship was needed varied, therefore, from six to eighteen months; and the total amount for each child varied between \$104 and \$200 distributed over a period of eighteen months. The necessary money was secured in coöperation with the Illinois Federation of Women's Clubs, and the payments are made weekly on Saturday, on presentation of the written statement of the principal of the public school that the child's attendance has been regular and satisfactory. This adequate volunteer aid, supplied by a few persons, shows once for all how slight is the basis for the widely expressed fear lest hardship be inflicted far and wide, by prolonging the period of childhood to the fourteenth birthday.

The results of this Illinois experiment in furnishing scholarships for children who had worked under the age of fourteen years and were deprived of wage-earning by the operation of the more stringent new law clearly demonstrate that children have not, to any considerable degree, been contributing to the support of their families. It is impossible that they should do so. The community must inevitably support in some way, well or ill, all its dependent members. But in the cruel belief that this burden could be placed upon the young chil-

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dren, thousands of them have, during the past thirty years, been deprived of the rights and privileges of childhood.

The state which accepts the plea of poverty and permits the children of the poorest citizens to labor prematurely, accepts the heritage of new poverty flowing from two sources; namely, on the one hand, the relaxed efforts of fathers of families to provide for them, and on the other hand the corruption of weak children by inappropriate occupations which involve temptation beyond the child's power of resistance, and the exhaustion of strong children by overwork. It is exactly the most conscientious and promising children who are worked into the grave or into nervous prostration, or into that saddest state of all, the moral fatigue which enables a man to sit idly about for years while his wife or his sister, or his children support him.

Hence it appears that there is need of shifting the accent of the current method of caring for dependent widows and children by public and private philanthropy. If the orphan child, by virtue of his future citizenship, has a claim to sustenance, education, freedom from exploitation (his labor being contraband), and a corresponding duty to go regularly to school, then there should be systematic harmonious provision for this. Such a child should not be left to the precarious provision of sporadic private charity. Why should such children not receive scholarships dependent upon regular attendance and good behavior, and provided out of the school-funds?

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The Glass-Bottle Industry.—The urgent need for the present stringent law of Illinois can, perhaps, best be made clear by a somewhat detailed description of the children in one trade as it was found to exist ten years ago.

When the first factory law of Illinois was enacted, in 1893, it prohibited the employment of children under the age of fourteen years in factories and workshops. For children employed in the glass-bottle works, this provision, until the present year, when the new law made this method more difficult, was successfully evaded by dissolute men and women who gathered in orphan and deserted children from the poorhouses of five counties adjacent to that in which stands the city of Alton, and from the orphan asylums in St. Louis, and made affidavits as "guardians" of the children that the lads were fourteen years of age when they were really from seven to ten. The "guardians" then proceeded to live upon the earnings of the children which were, in 1893, forty cents a day for small boys and sixty cents for larger ones. One "guardian" controlled the wages of several boys. In some cases the "guardians" and their wards lived in shanty-boats along the Mississippi river, drawing their floating habitations well up into the mud of the river bank for the winter, and floating away for the summer, when the glassworks closed. During this enforced holiday the "guardians" and the children lived precariously by fishing and berry-picking, the children profiting by the fact that the glass-

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blowers could not endure the heat of the ovens during July and August.

The earnings of the glass-bottle blowers depend somewhat upon the speed of the boys who fetch and carry for them. These lads are, therefore, kept trotting at the highest speed which a child can maintain for several hours. In making inspections of the glass-bottle works, the writer found it impossible to get from a boy a consecutive statement as to his name, address or parentage. A boy would say, "My name is Jimmie;" and then trot to the cooling oven with his load of bottles and returning say, in answer to a fresh question, "I live in a shanty-boat;" then trot to the moulder for another set of bottles and returning say, "I'm going to be eight next summer," and so on. Among twenty-four lads questioned during one night-inspection, not one ventured to pause long enough to put together two of the foregoing statements. And the eye of the boy interrupted in his work was always fastened anxiously upon the blower for whom he was working. The blower did not pay the boy, who was carried on the payrolls of the company; but when a boy was detained for the purpose of questioning, a shrill whistle sounded and the boy would say to the inspector, "Don't you hear him doggin' me?"

The load of bottles which a boy carries at any one time is not heavy and there is no lifting to be done. Hence such work is commonly described by employers as "light and easy." But the circumstances attending the work, the surroundings amid

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which it is done, fill the words with grim sarcasm. The sustained speed required of the children and the heated atmosphere render continuous trotting most exhausting. An hour's steady trotting in pure air tires a healthy schoolboy, of seven to fourteen years; but these little lads trotted hour after hour, day after day, month after month, in the heat and dust.

There was no restriction upon night work. Any boy who was eligible for work at all, was used indifferently by night or by day; and pitifully little children were found at work at two o'clock in the morning. Often a sleepy child, stumbling among fragments of white-hot glass, received serious burns; and bandages were more common than among any workers that the writer has seen in the course of many hundreds of inspections. Indeed, loss of time while recovering from burns received during their work constituted one of the grievances of the "blowers' dogs," of whom several were found in their homes convalescent from burns and other illnesses incident to their occupation. Mothers complained bitterly, too, of the loss of coats and shoes by burning when the boys collided with each other in the course of their work, the burden of each being glass heated just below the melting-point.

At the close of the day's work or the night's work, the children went from the heat and glare of the glass-ovens into the cold and dark of the morning or evening. They went, with the men with whom they worked, to the nearest saloons to buy the cheap drinks which were freely sold just across the street

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from the works. All the boys used tobacco, usually chewing it, those of seven and eight years of age doing exactly what the men did by whose side they spent their working hours. As seen and heard at their work, and at the closing hour, when they left the works, these children were stunted, illiterate, profane, obscene, ruined in body and mind before they entered upon the long adolescence known to to happier children.

The sharp contrast between the heat of the glass-ovens and the frost of the winter mornings, produces in the children, wearied by hard work, rheumatism and affections of the throat and lungs, from which many of them die before reaching the age of apprenticeship. Of those who survive, virtually none succeed in attaining the position and wages of a skilled glass-blower. Their health would be inadequate to the strain, even if the career were open to them. But it is not open; for an old rule of the union limits closely the number of apprentices to each hundred glass-blowers and fixes the age of apprenticeship at seventeen years. The coveted privilege of apprenticeship is commonly reserved by the blowers for their own sons, whom they do not employ as "dogs" but keep to the age of seventeen years, either attending school or working in some less destructive occupation than glass-bottle making.

When in 1893 the first efforts were made to enforce the child labor law in the glassworks at Alton, the employers and the press foretold dire sufferings for the widows dependent upon their

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children's earnings. The writer, as responsible head of the factory inspectors, by request of the governor of Illinois, made an investigation of the general conditions of life of the children and their families, aside from the work which they did in the glass-ovens.

It soon became clear that the opening for the employment of young children served continuously to attract to Alton a most undesirable population from many places in Illinois and neighboring states. Thus the first three alleged widows who were visited, had all come from other places for the express purpose of living upon the earnings of their wretched, illiterate sons, supplemented by the gifts of the charitable. One was found living in a tent with three children, the two younger ones being regularly neglected while the mother and the older boy worked in the bottle works. Another "widow" did washing, which was insufficient for the maintenance of herself and three children. Her husband had been sent two years before to an asylum, an incurable patient. A trifling, continuous addition to her earnings would have enabled her to keep her boy in school; but the charitable people of Alton contributed to the partial support of her family while the glass-works exploited her boy at wages below the point of present subsistence, and with no acquisition of skill such as might make him self-supporting in later years. If the boy had not worked, though of school age and illiterate, the mother feared that the charitable gifts might be wholly cut off. There appeared to be good reason

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for her fear, as the mayor of the city stated to the writer that he had, himself, sent to the glassworks in search of work, a widow and her little boy under the legal age for working, when the mother appealed to him for help. The third of the "widows" was blind, and her husband, blind also, was in an asylum. She lived in a shanty-boat with her four little children. Of her two boys aged seven and nine years who worked at the glassworks, one was blind in one eye. When the husband was sent to an asylum, the family was placed in its boat by the county authorities and told not to return. They accordingly floated down from a point above Plymouth to Alton where, although the two little boys immediately found work, the mother promptly applied for relief which was refused on the ground that "her able-bodied sons" should support her. In the family of a laborer who was working for eighty cents a day, the consumptive wife and baby were found shivering over a drift-wood fire in a dilapidated boat, while two boys aged eight and ten years worked at the glassworks. The family had floated down the river in the autumn for the sake of sending the children into the glassworks. A worn-out and dissolute glass-blower who had a pension of eight dollars a month and five children under the age of fourteen years, had recently married a widow with six children under fifteen years. Father, mother and the eleven children were living in a tent between the river and the works, where several of the children were employed, some by night and some by day, so that the beds in the tent

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were used by different children, one set rising to go to work when the others returned to sleep.

All these families—and they are merely a few examples of a large population which they typify—had been sent or brought to Alton in order to meet the demand of the glassworks for cheap child labor. They were a permanent charge upon the charitable people of the city. In no single case did the earnings of the little boys really support the family and relieve the community even immediately and temporarily of that burden. There was child labor and charitable help, and in most cases, chronic pauperism besides, with every prospect that the overworked, ill-brought up boys would themselves be speedily added to the ranks of the tramps or the invalids.

Under the recent rigorous prohibition of the employment of children under the age of sixteen years after 7 P. M., the possibility of exploiting such young children as were found at work in 1893 is much reduced. Under the provision which requires the oath of the parent to be corroborated by the signed statement of a responsible person in a recognized school, that the child is fourteen years of age, has attended school and can read fluently and write legibly, such exploitation must be still farther reduced.

What then, is it reasonable to expect in the immediate future for such dependent families as those above described? Certainly Alton can no longer serve as so powerful a magnet drawing them to itself. The local authorities of the various cities

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and counties can no longer ship to Alton all those dependent families which happen to include a young boy under the age of fourteen years. The artificial aggregation of pauperism in one place may be expected to diminish. A number of scattered communities will each have its own few dependent families of this class to sustain until the children attain the qualifications of age and education which the state stipulates. That these families can be induced to keep their children in school by means of a very modest scholarship for each child, has been conclusively shown by the experiment recently conducted in Chicago.

For many years, the opportunity for exploiting young children in Alton tended to collect there a disproportionately large body of dependent families. Then the presence and number of these families served as an argument for the necessity of continuing to exploit the children. The artificially accumulated mass of poverty perverted the minds of many otherwise kindly persons who failed to see that a pauper family is no less a pauper family because it is using up and wearing out by premature labor a young child who, if cherished and trained for a few years, would subsequently be able to support his family and redeem it from pauperism.

It is no small ethical gain to clear up the confusion of mind which led persons of all sorts to explain that the children who worked at the glass-works were so intrinsically and inevitably bad that nothing could be done with them in the way of education or of reform. The use of stimulants by

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young boys, which inevitably followed overwork and evil example, was very generally attributed to the hopelessly bad native character of the unhappy children; as were the foul language, filthy personal habits and propensity to gambling common to old and young employees. Every citizen of Alton who talked with the writer about the boys working at the glassworks, dwelt upon the bad character of the children, calling them "tough" or "dissolute" according to the habit of speech of the person. The suggestion of abolishing the work of such children, dispersing the army of little offenders, distributing them through the schools with which many of them were totally unacquainted, making schoolboys of the whole body of children of compulsory school age—the line of action taken by Boston, New York and Buffalo with regard to the dissolute young newsboys upon their streets—this simple recognition of the right of childhood to school-life and immunity from toil, never found expression on the part of one person with whom the writer came in contact in a long and active study of that prosperous city. The mayor actively promoted the employment of children under the legal age for work. An important officer of the board of education was a member of the glass manufacturing company, and was of the opinion that the employment of a truant officer and the enforcement of the compulsory education law would inflict an intolerable burden of poverty upon the community. The secretary of the associated charities, who was a minister, and the superintendent of the poor, also

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a minister, agreed that nothing could be done which would make it appear that the glassworks had been employing pauper labor, and therefore they could not undertake to furnish scholarships for the children whom the factory inspectors turned out of the glassworks because they were under fourteen years of age. Only teachers of the primary schools expressed regret at losing some of their brightest and best behaved little boys out of the lowest grades to go to work "among those drinking, swearing, gambling ragamuffins at the works."

It is clear gain for a community to be freed from such obliquity of moral vision as this; to be forced to face its own burden of sins of omission and commission against the children of its poorest and most dependent citizens; to be constrained to take upon the broad shoulders of the adult population that burden of maintenance which children cannot carry, even though in the cruel effort to force them to do the impossible they may be crushed body and soul as hundreds of children have been crushed and ruined in the beautiful and prosperous city of Alton.

In Southern New Jersey, in Western Pennsylvania, wherever the glass-bottle industry attains a high state of development, the same tendency is observable. Dependent families are, as it were, enticed to bring their young children to work in the glass-bottle factories. When a large number of such families have come, the demand for still more young boys leads to the importation of detached lads. Then the presence in the community of an

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undue proportion of dependent persons, young and old, serves as a reason for deferring legislation restricting the employment of the youngest children and providing for their education.

There is nothing either accidental or passive in this process. Although the manufacture of glass is one of the industries most highly protected by the tariff for many years past, and although the wages of glass-blowers are protected by a most influential and all-embracing union, yet employers and glass-blowers have, in at least two states, worked together to keep the children from receiving any adequate legislative protection. In Illinois for ten years the glass manufacturers were successful in their unwearying efforts to prevent the enactment of a provision restricting night work to persons over the age of sixteen years. And even when the present enlightened measure was finally passed, in 1903, this was done against the protest of the manufacturers and of a glass-bottle blower who appeared before the senate committee at Springfield in opposition to the bill. In New Jersey, in 1904, there was the same conflict, the glass-bottle blowers' union as such urging the passage of a law prohibiting night-work for children, and the glass manufacturers nevertheless securing for the opposition the support of a state senator at Trenton, who had once been a blower, and who succeeded in getting stricken out of the bill this most valuable of its provisions, despite the united efforts of the labor organizations of the whole state, and of the Children's Protective

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Alliance, comprising forty societies for the protection and welfare of children.

In Pennsylvania, in March, 1903, the Western Pennsylvania Association of Glass Manufacturers voted at a public meeting held in Pittsburg to keep a committee at Harrisburg throughout the session of the legislature to prevent the enactment of a measure prohibiting night-work for children and all employment of illiterate children. So successful was this committee that the friends of the bill were not even granted a hearing before the senate committee to which the bill was referred. In all these cases the arguments used were identical. Poverty must not be intensified by prohibiting the employment even of the youngest and most illiterate children.

Fortunately, the friends of the working children have at last succeeded in bringing to light the hypocrisy of this plea. It has been shown that for a series of years the glass manufacturers of New Jersey and Ohio have imported children from other states. Charitable institutions and child placing agencies have been appealed to to furnish detached boys and have done so in more than one case. Children have been sent from one state to another to meet the demand. It is now only a question of time until all the legislatures which have to deal with this child destroying trade shall take the same view which Illinois and New York have taken; and shall say that the state can better afford to part with such an industry than to sacrifice to it hundreds of children every year. And when they do this, no

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state will lose its glass-bottle industry; but the installation of mechanical contrivances to supplant boys will go forward just as cash carriers are now supplanting cash children, and as the telephone is replacing the telegraph and messenger boy in many suburbs. In some occupations child labor by its very cheapness to the employer actually hinders the use of devices which are costly in the initial installation; and it is believed that the glass-bottle industry is one of these.

The glass-bottle industry illustrates one significant phase of child legislation in this country; namely, the long default of philanthropy on behalf of the wage-earning children. We have had no Lord Shaftesbury devoted to the child workers and coöperating with the organizations of workingmen in the interests of the children. To the organizations of labor are due all the earlier statutes for the protection of the working children, and this protection has been left wholly to the trades unions until within a very few years. In certain industries this has been done effectively, as in the cigar trade where the introduction of machinery is only now leading to a large influx of children. In other industries, the adaptability of children has been so great as to render the unions powerless to protect them adequately either by legislation or by refusing to work with them. Conspicuous among these are the textile industries. In still other trades, the wages of the worker have been made to depend in some degree upon the interlocking work of children, and in these the difficulties attending progress

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towards adequate guarding of childhood have been most conspicuous of all. Such is the glass industry. Here the wage of the blower of bottles, lamp chimneys, drinking glasses and many other small objects depends largely upon the speed with which children as moulders and carriers coöperate with him. Hence the blower has a strong money interest in the employment of nimble children in abundance.

It is vastly to the credit of the workers in the trade that, through their organizations, they have made a struggle covering the last quarter of a century for statutory prohibition of night work for children. And it is easily understood how their efforts have here and there been foiled by a weak brother proving open to the persuasions of the employers and ready to appear before legislative committees on behalf of the farther work of children in the same old way.

It is, however, sadly true that workingmen are not always experienced in the drafting of bills, and that some of the measures which they have advocated have proved non-enforceable when enacted. Moreover, they have in several conspicuous cases been induced to contribute actively, though unintentionally, to the nullification of the statutes the enactment of which they had secured, by accepting as responsible heads of the factory inspection departments men whose sole qualification for the position was their professional devotion to the cause of trade organization. Two classic examples of this are the chief factory inspectors of Pennsylvania and Illinois during the closing years of the nineteenth

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century. In the former state the unions acquiesced in the utterly incompetent administration of the department of factory inspection because the chief inspector had been for several years an officer of the Glass Workers' Union of the Pittsburg district, although he effectively blocked every effort to improve the laws with regard to the employment of children at night or while illiterate. The chief inspector of factories of Illinois from 1897 to 1901 had been, previously to his appointment, for twenty-seven years on the pay roll of the Illinois Glass Company at Alton. Throughout his term of office there were no prosecutions for violations of law by glass manufacturers, nor was the child labor law of Illinois amended. Yet no effort seems to have been made by any trade organization to secure his removal and the appointment of an effective official.

Within five years philanthropic people, notably many organizations of women, have systematically worked for the enactment and enforcement of child labor legislation, usually in coöperation with the state and local organizations of workingmen. Just in proportion as this coöperation develops will the gains on behalf of the working children become permanent; and the coöperation, itself, is a process of education for both philanthropists and workingmen.

CHAPTER II

THE CHILD, THE STATE, AND THE NATION

It has been shown that children are working in their homes, in the streets, in commerce, and in manufacture; and it appears that there are divers economic and social causes for their work.

Chief among these causes of child labor is the greed of parents, due largely but not exclusively to poverty. Two cases out of the writer's acquaintance may illustrate the false ideals which underlie much parental exploitation of young children.

An Italian immigrant arrived in this country possessed of nothing beyond his wife, little son and daughter, and railroad fare to Chicago. In that city he rented one dark room in a tenement-house and proceeded to pick rags in the streets. His wife sorted the rags in the court of the tenement-house with the help of the daughter; and the boy became a boot-black as soon as he was strong enough to make leather shine. The children never attended school, the compulsory attendance law being, at that time, wholly illusory. The father prospered, placed money in the savings-bank, and in an incredibly short time began to buy, under a third mortgage, the house in which he lived. The court of the tenement-house becoming too small for his work, he rented a

vacant lot on which he stored rags, old iron and junk of all sorts. He never ceased to pick rags, and transferred the labors of his wife and daughter from their court to the new place of business which he surrounded with a high fence. He completed the payments for all the mortgages upon the tenement-house, continuing to the time of his death to live, with all his family, in the dark room which he had occupied on his arrival. He paid for the corner-lot upon which he conducted his business and made other investments. It was his ideal to leave his children a large fortune. But one day he trod upon a rusty nail, and with characteristic niggardliness, bound up his bleeding foot with one of his own rags. Lockjaw followed and he died, leaving to his now grown up, illiterate son and daughter one hundred and forty thousand dollars. The son, by drinking and gambling, dissipated the fortune in a few months, and the daughter disappeared into the sad obscurity of the Levee.

In the case of the second family, a young Bohemian, able-bodied and eager to work, brought his bride to this country, both filled with the hope of earning and owning a home. When the eldest child was eleven years old, the father was killed on the railroad, where he was at work as a section-hand, and the home, half-paid for, was lost by the widow. But she never wavered from the early ideal, and sent her eldest boy at once to work in a cutlery, where he riveted the wooden handles of knives, performing an entirely mechanical task adapted to his feeble intellect. This child was hunchbacked, feeble-minded

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and consumptive. When the mother was remonstrated with for exposing him to the fatigue and danger attending his work among wood-dust and steel-filings, her reply was: "Him no good. Him work, send Valeria and Bocumil school, buy house, them some good." For years, the factory inspectors of the state, and the local school officer, after the enactment of the compulsory attendance law, endeavored to free the unfortunate boy from his deadly occupation. The mother made whatever affidavits might be necessary from time to time, to enable him to continue, and relentlessly sent his brother and sister to work at the earliest moment possible. When last seen, she was rising at three o'clock in the morning to dig onions for a pickle factory in the outskirts of the city; the daughter Valeria, ten years old, was working from dawn to dark throughout the summer, sorting onions; the cripple was dying of overwork and neglect; and the other boy, Bocumil, originally healthy, had become deformed from beginning too early to carry boards on his back in a furniture factory.

The widow, however, regarded herself and was regarded by her approving pastor as a model of thrift because she had bought and partially paid for a tiny frame cottage, on the prairie, far from any school, in the immediate neighborhood of the pickle-factory. She will never know that she has lost for her children all the best things that America offers to the immigrant child, in the life of the public schools. Fortunately, the recently enacted stringent laws will make it impossible for other children coming to Chicago to

be deprived, by the false ideals of their parents, of those precious possessions of child life in America, leisure and school.

A second cause of child-labor is the greed of employers for cheap labor, enhanced by every improvement in machinery of the kind that makes the work of children available ; and enhanced, also, by the very cheapness of the children to such an extent as to delay the introduction of new machinery if its installation is costly. This greed is exhibited in its most odious form in the glass industry, the textile industry, and the sweating-system. It knows no restraints except those of effective legislation enforced by enlightened public opinion, as is shown by the action of those Northern cotton mill men who obey the laws of Massachusetts and New York in their mills in those states, but in Georgia fall to the level of their local competitors, employing children ten years old and less, throughout eleven hours a day.

A third cause of child labor is the greed of the community in desiring to keep down the cost of maintenance of its dependent class. This greed disguises itself under the form of solicitude for the moral welfare of the children. Just as the managers of the worst so-called reformatories insist that children must work under the contract system, "because they must be kept busy to keep them from being bad," so this solicitude for childish morals insists that "children must not be habituated to dependence," quite forgetting that dependence is the quality bestowed upon childhood as its distinguishing characteristic.

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Any candid person, on being asked, "What virtues may be reasonably expected of children?" must reply that we do not yet know. Our studies of the psychology of childhood are still so imperfect and inconclusive that it is not safe to dogmatize in this field. But by a process of elimination it is possible to arrive at certain conclusions which seem worth at least careful consideration.

Thus, observation of so-called self-made men suggests a serious danger that a child precociously self-respecting in the matter of earning his living may pay a high price, later in life, for his precocity. It is proverbial that the employer who began life as a working boy and through continuous exertions rose to power and responsibility, is apt to be a ruthless employer. The unnatural strain of his own early experience seems to entail this penalty upon his character and consequently upon his unhappy employees. Self-respect due to self-maintenance seems to be a virtue suitable to the later years of adolescence and to adult life,—never to childhood. Moral precocity seems to be quite generally followed by exhaustion or by reaction taking the form of greed, rapacity and calculating self-seeking.

Just as excessive fatigue, or habitual loss of sleep in childhood is punished in later life by the craving for stimulants, and by nervous insufficiency manifesting itself in the most diverse ways,—so the burden of industrial employment borne in early, tender years, disables the boy or girl for enlightened, self-supporting citizenship in later life.

To impute a virtue not normal to childhood and

then insist that the children shall live up to adult standards applied to that virtue, is perverted, and injurious alike to the community which follows this course and to the children who suffer under it. If the burden of self-maintenance or the attempted maintenance of others is placed upon young children,—if child labor is tolerated,—the ethical standards of the community are bad. For a task which is normal and right for adults cannot be performed by children without sacrificing in the process their future usefulness to the Republic.

The insistent plea that children must work in order that they may acquire habits of thrift and attain prosperity for themselves and their families is uttered with greatest persistence by the employers who profit by the labor of the children. It is the glass manufacturers who voice this tender solicitude for the moral well-being of the wage-earning children in New Jersey and Pennsylvania, when there is a growing movement in those states for prohibiting night work, as it has been prohibited in Illinois. In the South, it is the cotton-mill owners and their legal advisers who insist that little children from the mountain farms must toil eleven hours a day in the mills of Georgia, working throughout the night whenever it may be useful to their employers to have them do so.

These pleas are heard with willing ears by communities which begrudge money for the maintenance of schools and the assistance of dependent widows and orphans; and not without good reason. No sooner had the new law of New Jersey required chil-

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dren to attend school to the fourteenth birthday, and prohibited boys under that age from working in manufacture, than it became necessary to build a new schoolhouse in a suburb of Millville, to accommodate the boys turned out of the glassworks. In Alton the enforcement of the child labor law of 1893 led to the immediate construction of a new schoolhouse for the children freed from the glassworks, and to the reopening of a building which had long been out of use. Wherever children are freed from work, the community must provide for them schools, teachers, attendance agents, factory inspectors and all those officials and provisions which are essential to the care and defense of childhood under the pressure of the competitive system.

Besides being essentially immoral, the effort to burden young children with the task of self-maintenance is doomed to failure, for under existing conditions a child does not, and cannot achieve complete self-maintenance. The three great series of industries in which children are largely employed,—the textiles, glass-making and the needle-trades,—are parasite trades. They are all protected by tariffs for the advantage of the employers;—and by more or less stringent trade regulations for the advantage of the adult male employees. In the case of the needle-trades, there are lavish subsidies from the public treasury of New York City, the great center of the needle-trades for the western hemisphere. By the help of these subsidies, sewing is done by the inmates of institutions erroneously called private, while maintained by the taxes of the community, at rates with

which no private manufacturer can long compete. But more insidious than all these contributions to the parasite industries is the steady contribution of underpaid work from children who carry home wages too small to support them.

Parents become willing to exert themselves less when the eldest boy and girl begin to contribute something towards the family maintenance, and are not strenuous in the demand that the child's wage shall afford self-support. "Every little helps," is the hand-to-mouth consideration with which the hard-worked immigrant withdraws his son or daughter from school on the first day that the law allows.

The unthinking community tends to approve every exertion in the direction of money earning on the part of those who are most nearly at the line of submergence, asking no questions as to the ultimate effect upon the future citizen.

The oncoming generation neither knows nor cares what burden of incapacitated members the present generation is preparing for it. But the burden will have to be borne, just in proportion as the children of to-day are deprived of the right to childhood. And nothing is more surely handed down than the callous indifference of the mass of the people to the *causes* of that destitution which is an intrinsic part of the life of every manufacturing community;—as, for instance, the death or disability of the breadwinner, or the widespread and ever-increasing custom of desertion by the fathers of burdensome young children.

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Thus the essentially immoral effort to place upon the children the burden of self-maintenance not only fails at the moment,—it reacts injuriously upon the community, preparing for the next generation an undue share of incapacitated members, bequeathing to the future a large proportion of unfit and incapable citizens, and finally generating, among the people at large, indifference to the causes of death or disability of the breadwinner.

On the other hand, with the growing recognition of the right of the child to maintenance and education throughout a prolonged period, goes a lively interest in the health and welfare and probity of the normal breadwinner, who is theoretically responsible for its support.

In other words, while the demand for child labor is an economic one, the causes of its persistence are moral and social and are rooted in the false ideals of parents, employers, taxpayers, and all those indifferent people who care nothing what citizens are being trained for the future life of the Republic.

Consequences of Recognition of the Child's Right to Exemption from Work.—Wherever the community recognizes the right of the children to freedom from labor, the question of maintenance comes to the front and the widows and dependent orphans loom large in the imagination of the kindly. On the other hand, where the effort is made to place the burden of maintenance upon young children, the loss of the breadwinner appears of less vital importance to the community. Tuberculosis, carrying off heads of families, burdens the manufacturing

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communities of the United States annually with thousands of widows and orphans. Preventable deaths of breadwinners in the railway service burden in the same way the communities in which their families live. If now, these communities face the task of cherishing the children and educating them throughout childhood to full fitness for citizenship, the problem of orphanage relates itself, in a new and vital way, to the question of the prevention of needless deaths of men in the prime of life. Orphanage becomes recognized, not as an accident or an inevitable misfortune for the individual family, to be borne with what fortitude can be summoned; but as a social and industrial phenomenon, a burden to be minimized by preventive and precautionary measures. It is not accidental that Massachusetts, the state which has longest guarded the right to childhood, is also the state in which the safety of life and limb of the adult worker is best safeguarded by statutory provision.

The enforcement by the Interstate Commerce Commission of statutes providing for life-saving devices to be used upon railways, has undoubtedly diminished the preventable deaths of breadwinners, reduced the number of orphans, limited the temptation to exploit young children, and thus reacted in an important way to the ethical gain of the nation, quite aside from its direct value to the railway employees.

When young children are made ineligible as breadwinners, the responsibility is placed where it belongs, upon their parents or upon the community. And

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there is nothing more moralizing going on at present in the United States than this shifting of responsibility from the weaker to the stronger.

Hand in hand with restriction upon the work of little children goes increased care to prevent the importation into the state of dependent and delinquent boys and girls. Thus, for instance, Illinois and Michigan have now rigid statutes prohibiting bringing into those states any child whose future maintenance is not provided for either by the presence of an accompanying parent or guardian, or by a bond furnished by an incorporated society for the care and guardianship of the child. Recent revelations of the importation of boys from one state into another, for the use of glass manufacturers, show an urgent need for similar care on the part of all states in which this industry flourishes. Just as the textile mills, in the days of Sir Robert Peel's act, sought apprentices among the little children in the workhouses of England, so the glass manufacturers, to-day, seek orphans and other detached boys from poorhouses and voluntary charitable bodies; and the traffic in such boys goes forward where it is not checked by legislation and by the coöperation of labor organizations and child labor committees working together.

When the orphans are scrutinized and provided for, it becomes clear that the problem of child labor is really not the problem of the orphan. It is the problem of cheap hands for the employer of cheap labor;—the problem of permitting to selfish parents the luxury of absorbing the premature earnings of young children. But it is the pride of the enlight-

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ened employer that he supplants human labor with mechanical devices as rapidly as ingenuity enables him to do this; and every restriction upon the supply of children in the labor market stimulates this process.

It is clearly the duty of the parent to support his children; that is his obligation to the Republic. He must insist upon wages sufficient to enable him to do this; and the withdrawal of thousands of young children from competition with adults contributes to his ability to make his own terms for wages wherewith to support his own. An aged Welsh miner, of the writer's acquaintance, who had emigrated to Illinois, once related upon the floor of the state legislature, of which he was a member, his own experience in this respect. In Wales, he and his wife and two little sons had all worked underground, making the barest living. It was proposed to prohibit the work of women and children underground and he was filled with consternation lest they all starve. But the law was passed, the wife and children, instead of mining coal, lived above ground, the children attending school and the wife cultivating a garden; and within twelve months the father of the family was earning more than all four persons had previously earned by their combined labor. So convinced was the speaker that his experience was typical of the depressing effect of the work of women and children in unsuitable occupations, that he convinced his colleagues, who passed unanimously the pending child labor bill.

The practical value, to the state and to the children, of effective child labor legislation is well illus-

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trated by a comparison of the employment of children in New York, Pennsylvania and Massachusetts. When rated according to their population and the value of their manufactured products, the two leading states are New York and Pennsylvania, the former excelling in both respects according to the census of 1900. In the number of children under the age of sixteen years engaged in manufacture, these states excel all the others, as appears from the following table of states having more than five thousand such children.

CHILDREN UNDER 16 YEARS OF AGE ENGAGED IN MANUFACTURE¹

Pennsylvania	33,135
New York	13,189
Massachusetts	12,556
Illinois	10,419
North Carolina	10,377
South Carolina	8,560
New Jersey	8,042
Georgia	6,373
Maryland	5,884
Wisconsin	5,679
Rhode Island	5,036

In this table, however, it is Pennsylvania which comes first and New York which takes second place, there being 33,135 children under the age of sixteen years engaged in manufacture in Pennsylvania, compared with 13,189 children under that age in the state of New York, a difference of 19,946. This does not include children engaged in commerce and mining;—does not take into account mine boys or breaker

¹ These figures are found in the Census, 1900, Manufactures, Part II, States and Territories, p. 987.

boys, office boys, newsboys, bootblacks, peddlers, delivery boys, cash children, or children who work out of school hours while regularly attending school. It is strictly a statement of the children employed in manufacture in both states.

The astonishing excess of children employed in Pennsylvania is emphasized by the circumstance that New York has not only a larger population but a larger total value of manufactured goods than Pennsylvania. How then is the fact to be explained that Pennsylvania employs in manufacture two and one-half times as many children as New York?

One explanation may be found in certain differences in the child labor laws in force in the two states for several years preceding 1900. Thus in Pennsylvania children entered upon factory work a year earlier than they had been permitted to do in New York since 1889, the age for beginning work having been, until May, 1905, thirteen years in Pennsylvania and fourteen years in New York.

In Pennsylvania, a child was not, before 1900, required to be able to read and write before beginning to work in a factory. In New York, since 1893, a child under sixteen years of age must be able to read fluently and write legibly simple sentences in the English language before it can legally enter a factory.

In New York a minor under the age of sixteen years cannot legally be employed in a factory after nine o'clock at night; in Pennsylvania, boys and girls alike could, until May, 1905, at the age of thirteen years be employed ten hours six nights in the week.

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Even yet, boys of fourteen years may be employed all night in the glass industry and in certain other branches.

There was greater difficulty in New York in obtaining the certificates required to be filed with the employer before a child may legally begin to work. In Pennsylvania, the parent was required merely to make oath as to the age of the child before any notary, and, until May, 1905, the affidavit thus made protected the employer against prosecution for violation of the child labor law, while the parent was nominally liable to the charge of perjury if the age of the child was falsely stated.

In New York, since 1896, the affidavit of the parent is only one of three assurances of the child's age and qualifications which must be included in the certificate deposited with the manufacturer. The parental oath must be supplemented by the written statement of the teacher that the child has regularly attended a school in which instruction is given in reading, writing, arithmetic, geography and English grammar; and this must be farther strengthened by the statement of the officer of the board of health, who alone can issue the certificate, that he is satisfied that the child is fourteen years of age.

This provision, in force from 1896 to 1903, has now been supplanted by a more drastic one. In the years 1896-1900, however, the threefold requirement probably contributed to keep down the number of working children in New York compared with the lax issuance of affidavits by notaries in Pennsylvania, with no other check than the fear of a remotely pos-

sible prosecution of the parent on the charge of perjury.

Briefly stated, the differences appear to be these. In Pennsylvania, a child of thirteen years could, until May, 1905, work in a mill at night without breaking the law. In New York, a child may not begin to work under the age of fourteen years; an illiterate child may not work under the age of sixteen years; and a minor under eighteen years may not work after nine o'clock at night in manufacture. Moreover, the factory law is better reënforced by the compulsory education law in New York than in Pennsylvania.

In New York for several years preceding the census year, 1900, children between the ages of twelve and fourteen years were required to attend school 80 days in the year. The Board of Health of New York City refused to issue certificates to such as had failed to complete the 80 days' attendance in the year preceding the fourteenth birthday, sending such children back to school to finish the uncompleted term.

In Pennsylvania, children were, in the same years before 1900, merely required to attend school 70 per cent. of the school term in the district in which they resided.

The results of these differences in the child labor law and the compulsory education law are reflected in two other tables of the Census of 1900 (printed elsewhere in this chapter) according to which New York had 4,740 illiterate children between the ages of ten and fourteen years, compared with 6,326 such

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children in Pennsylvania; and New York ranks fourteen in the scale of fifty-two states and territories when measured by the percentage of children between these ages who are able to read and write, while Pennsylvania is number twenty in the same scale.

The statistics of these two leading manufacturing states are discussed thus in detail because they indicate both the need of farther legislative protection for the children, and the gain which has already been made in New York by the long enforcement of the imperfect provisions of the earlier laws. For ten years, beginning in 1893, New York is believed to have been the only state which required children under the age of sixteen years to be able to read fluently and write legibly simple sentences in the English language before permitting them to begin to work for wages. The practical working of this provision was illustrated when the first suit under it was brought against a clothing contractor in New York City who had violated the law by employing a Russian girl fifteen years of age who could neither read nor write in any language. Six weeks elapsed after the arrest of the employer and the dismissal of the child from work, before the case came up for trial before the magistrate. The judge dictated to the girl: "This house is built of bricks," by way of a simple sentence to be written legibly. The child promptly wrote: "This hous is bilt of briks," and the case was dismissed. The inspector, angry at losing his case, and puzzled at the child's speedy acquisition of the English language in words of one

syllable, made some investigation of the circumstances and learned that, on the day following the girl's dismissal from employment, she had entered the public school, attending both the day and evening sessions. She had also attended two different Sunday schools, one in the morning and one in the afternoon, and had taken books from the library. Thus, in the space of six weeks, by specializing strictly upon learning English, she had saved her employer a heavy fine, and had prepared herself to resume her work in his shop according to the requirement of the law.

Recently the new statutes which require more educational preparation for work, prescribing that every boy must attend day school until the work of the fifth year of the public school is finished and night school to the sixteenth birthday or the completion of the work of the eighth year, have brought to light several instances of the padrone system within the families of immigrants.

A man and his wife imported a sister aged fifteen years from Italy for the purpose of securing for the wholly illiterate girl immediate work in a silk-mill. When it became clear that the child would not be ready to comply with the new educational requirements within a year the intention of the relatives was betrayed by their cruel treatment of the dependent girl.

There could scarcely be more undesirable immigrants than half-grown, illiterate children brought into the congested manufacturing centers by their sordid relatives for the express purpose of crowding

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into factories and sweat-shops. It is a most valuable function of child labor legislation to discourage the immigration of families coming to this country for the purpose of exploiting their children in the textile mills, the street trades and other undesirable occupations. However welcome immigration may be to the employers and the transportation companies, it is a valuable addition to the national life only so far as the immigrant children can be made into trustworthy American citizens. To check that form of the padrone system which consists in bringing young sisters-in-law and brothers-in-law to this country for the purpose of sending them into silk-mills, or hiring them out to master boot-blacks under the pretense that they are dependent orphans, is one of the beneficent functions of compulsory education laws and child labor laws,—though of course a merely incidental feature of such legislation. The correspondence between the Italian and Russian colonies in America, and the relatives remaining in the old country, is so continuous, that the new educational requirements of the State of New York will be well known on the other side of the ocean within a year and may well be regarded as one of the wisest forms of restriction upon undesirable immigration. The state of New York welcomes immigration on the largest scale that the world has ever beheld. But it humanely insists that the immigrant must meet the terms prescribed by the state, which include maintaining his children until they can read and write English, even though that keep them at school and away from work until the sixteenth birthday.

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The same general result was observed in Chicago, in the fall of 1903, after the enactment of a similar provision in Illinois. A professional beggar was seen taking his children to school. A friendly visitor who had labored in vain for seven years to induce him to let them go to school, was greatly interested in the change and, on inquiring about it, was told by the beggar that the children would soon be old enough to go to work, but would not be granted the necessary papers unless they had proper certificates of school attendance. The statute thus reënforces the parental sense of duty when that is under the heaviest pressure of temptation to exploit young children, in a strange land, in dire poverty, in the helplessness of illiterate adults out of work and in need of reënforcement of all kinds.

A comparison of the status of child labor in Massachusetts and in Pennsylvania confirms the opinion that legislation has long been gradually benefiting both the children and the community just in proportion as it has been effectively stringent. It is not accidental that Massachusetts had in 1900 12,556 children in her mills compared with 33,135 in Pennsylvania. The textile industry in both states calls for children. In Massachusetts, the public conscience has registered gradually throughout a series of years, and the restraints imposed by frequently amended legislation have kept the number of working children from growing rapidly. In Pennsylvania there were, until May, 1905, only the most meager changes in the factory law since its enactment in 1889. In Massachusetts, a child cannot

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legally work in a mill under the age of fourteen years. In Pennsylvania, it could, until May, 1905, legally enter a mill on the thirteenth birthday, and defects in the wording of the law facilitated perjury to such an extent that children were found in textile mills and tobacco factories at the age of ten years. In Massachusetts, a woman or minor under eighteen years of age cannot legally work in a mill after ten o'clock at night; but in Pennsylvania whosoever could work at all, could work all night, little girls only thirteen years of age included. In this respect Pennsylvania compared unfavorably, as has been pointed out, with Alabama, whose new law restricts to eight hours at night the work of children between the ages of thirteen and sixteen years. It is not generally known that there was a serious danger to little girls arising from the custom, which prevailed in some Pennsylvania mills where night-work was done, of turning the children out into the dark, at midnight during the warm weather, just as employees are expected to go forth at noon when working on the day shift. The associations of such little girls, at such hours, in such surroundings, are a fit subject, not only for painful contemplation, but for the most vigorous action of all persons interested in the prevention of one of the direst forms of cruelty to children.

Undeterred by the competition of textile mills in less progressive states, as, for instance, Pennsylvania and Rhode Island, Massachusetts excelled all rivals in her statutory care for children employed in manufacture, from 1874 to 1903. In the latter year

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New York and Illinois enacted laws which went beyond the provisions of Massachusetts, both in the educational requirements exacted of children before going to work, and in the hours of their labor.

In 1904, Governor Bates appointed a Committee on the Relations of Employer and Employee, consisting of Carroll D. Wright, United States Commissioner of Labor, Davis R. Dewey, of the Massachusetts Institute of Technology, Henry Sterling, Royal Robbins and William N. Osgood. These gentlemen embodied in their report, dated January 13, 1904, a series of recommendations with regard to the employment of children which, if enacted into law, would still leave Massachusetts fourth in rank among the states when ranged according to the length of the working day permitted to children under the age of sixteen years. They say: "From such inquiries as we have been able to make we do not believe that the manufacturing interests of the state would be seriously affected by the extended prohibition of night labor after 7 P. M. to all children under sixteen years of age. . . . The arguments in favor of shutting children out from night-work are so obvious that they do not need extended discussion, nor does it appear that one kind of employment should be favored as against another. The physical and moral advantages to be gained by exclusion from night-work are common to all children. We therefore recommend that no children under sixteen years be permitted to engage in any gainful occupation between 7 o'clock in the evening and 6 o'clock in the morning."

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The extended restriction of the hours of young mercantile employees to 58 in one week during the month of December became law in 1904, but children may still be employed in stores and mills to ten o'clock at night provided they do not work more than 58 hours in the week.

The significant point is that the Committee¹ does not recommend that the hours of labor of children be at once reduced to eight in one day as in Illinois, or to nine in one day as in New York and Delaware, or to fifty-five in one week as in New Jersey. On the contrary, the Committee said: "Inasmuch as the labor of children in some industries interlocks with the labor of adults who now work ten hours per day, we fear that such restriction would practically result in the discharge of children from employment. Such an outcome would be unfortunate, unless children were forced to attend school by a change in the compulsory school law already referred to. We therefore do not favor consideration of legislation further limiting the number of hours of labor until that question is reported upon by the State Board of Education."

It is never to be forgotten that, hitherto, Massachusetts has fearlessly gone forward in her course of educating and protecting her children regardless of the action of other states and their competing interests. Neither, however, is it to be forgotten that there are now more spindles in the cotton industry south of Mason and Dixon's line than north of that

¹ *Report of Committee on Relations of Employer and Employee, 1904*, Boston, pp. 32, 33, 34.

line; and that the pressure of Southern competition renders it increasingly difficult to maintain the position already achieved by Massachusetts. The enforcement of existing requirements becomes more burdensome as the reductions in wages of adults incite parents to perjured affidavits stating that children are older than they really are, in order to add the child's wage to the decreasing family income, and the force of the statute is thus undermined.

Inter-State Aspect of the Right to Childhood.—Hitherto the right to childhood has been considered in the light of the experience of children in certain occupations, and in the light of the legislative provisions of certain states for protecting children from too early toil. The broader question, what the people of this nation as a whole are doing to assure to the Republic, a generation hence, an intelligent citizenship, has scarcely been formulated. The question is, however, compendiously answered by two tables of the United States Census of 1900, which have not yet received that general and widespread discussion which their significance renders imperative.

The first table shows the percentage of children between the ages of ten and fourteen years who were able to read and write, in 1890 and in 1900. Except Nevada, whose Indian children were first included in 1900, all the states have been reducing the percentage of illiteracy. The figures upon which the percentages are based are given in a second table, wherein the states are twice arranged, once alphabetically and again in the order of the ability of the children to

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read and write, those states being grouped at the top which have the least number of illiterate children and those states grouped at the bottom which have the largest number of illiterate children.

PER CENT. ABLE TO READ AND WRITE AMONG PERSONS 10 TO 14 YEARS OF AGE

1900		1890	
1. Nebraska	99.66	Iowa	99.23. 1
2. Iowa	99.63	Massachusetts	99.17. 2
3. Oregon	99.58	Ohio	98.92. 3
4. Ohio	99.51	Kansas	98.86. 4
5. Kansas	99.48	Connecticut	98.79. 5
6. Indiana	99.45	Illinois	98.75. 6
7. Connecticut	99.43	Nebraska	98.75. 7
8. Utah	99.34	New York	98.62. 8
9. Massachusetts	99.33	Wisconsin	98.35. 9
10. Michigan	99.30	Minnesota	98.21. 10
11. Washington	99.30	Oregon	98.20. 11
12. Minnesota	99.29	Michigan	98.17. 12
13. Wisconsin	99.27	Indiana	98.00. 13
14. New York	99.26	California	97.93. 14
15. Illinois	99.18	New Jersey	97.86. 15
16. Wyoming	99.08	Pennsylvania	97.82. 16
17. Vermont	99.05	Washington	97.75. 17
18. South Dakota	99.00	Maine	97.57. 18
19. California	98.99	Vermont	97.57. 19
20. Pennsylvania	98.99	South Dakota	97.55. 20
21. New Jersey	98.81	Colorado	97.21. 21
22. Idaho	98.77	New Hampshire ..	96.63. 22
23. Colorado	98.48	Montana	96.47. 23
24. New Hampshire ..	98.31	Utah	96.24. 24
25. Dist. of Columbia..	98.25	Wyoming	96.23. 25
26. Rhode Island	98.12	Idaho	96.18. 26
27. Montana	98.07	Rhode Island	96.03. 27
28. Maine	97.92	North Dakota	95.58. 28
29. North Dakota	97.65	Dist. of Columbia.	94.61. 29
30. Oklahoma	97.26	Missouri	94.48. 30

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<i>1900</i>		<i>1890</i>	
31. Missouri	96.64	Nevada	92.83. 31
32. Delaware	95.49	Oklahoma	91.81. 32
33. Maryland	95.36	Delaware	90.96. 33
34. West Virginia ...	94.74	Maryland	90.54. 34
35. Nevada	91.88	West Virginia ...	89.16. 35
36. Kentucky	91.56	Texas	85.55. 36
37. Texas	90.74	Kentucky	85.17. 37
38. Florida	86.24	Florida	82.43. 38
39. Tennessee	85.08	Tennessee	80.94. 39
40. Virginia	84.33	Arizona	79.62. 40
41. Arkansas	83.80	Arkansas	77.89. 41
42. New Mexico	80.07	Virginia	77.32. 42
43. North Carolina ...	78.25	Mississippi	73.47. 43
44. Arizona	77.79	New Mexico	72.04. 44
45. Mississippi	77.62	North Carolina ...	69.38. 45
46. Georgia	77.21	Georgia	66.73. 46
47. Indian Territory..	75.61	Alabama	64.50. 47
48. Alabama	71.11	South Carolina ...	61.03. 48
49. South Carolina ...	70.44	Louisiana	57.26. 49
50. Louisiana	67.12		

CENSUS 1900

(Population, Vol. II, Part II, Table 65—pp. 422)

ILLITERATE CHILDREN BETWEEN THE AGES OF 10 AND 14 YEARS IN EACH STATE

Alabama	66,072	1. Wyoming	72
Alaska	1,903	2. Oregon	175
Arizona	2,592	3. Idaho	209
Arkansas	26,972	4. Utah	220
California	1,279	5. Nevada	275
Colorado	742	6. Vermont	287
Connecticut	435	7. Washington	340
Delaware	845	8. Montana	374
Dist. of Columbia..	398	9. Hawaii	394
Florida	8,389	10. Dist. of Columbia.	398
Georgia	63,329	11. Nebraska	412
Hawaii	394	12. Connecticut	436

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Idaho	209	13. South Dakota	472
Illinois	4,044	14. New Hampshire..	557
Indiana	1,453	15. Rhode Island	691
Indian Territory...	12,172	16. Colorado	742
Iowa	883	17. North Dakota ...	836
Kansas	878	18. Delaware	845
Kentucky	21,247	19. Kansas	878
Louisiana	55,691	20. Iowa	883
Maine	1,255	21. Maine	1,255
Maryland	5,859	22. California	1,279
Massachusetts	1,547	23. Oklahoma	1,295
Michigan	1,744	24. Minnesota	1,365
Minnesota	1,365	25. Indiana	1,453
Mississippi	44,334	26. Massachusetts.	1,547
Missouri	11,660	27. Wisconsin	1,688
Montana	374	28. Michigan	1,744
Nebraska	412	29. Alaska	1,903
Nevada	275	30. Ohio.....	2,048
New Hampshire ...	557	31. New Jersey.....	2,069
New Jersey	2,069	32. Arizona	2,592
New Mexico	4,354	33. Illinois.....	4,044
New York	4,740	34. New Mexico	4,354
North Carolina	51,190	35. New York.....	4,740
North Dakota	836	36. West Virginia ...	5,819
Ohio	2,048	37. Maryland	5,859
Oklahoma	1,295	38. Pennsylvania.....	6,326
Oregon	175	39. Florida	8,389
Pennsylvania	6,326	40. Missouri	11,660
Rhode Island	691	41. Indian Territory..	12,172
South Carolina	51,536	42. Kentucky	21,247
South Dakota	472	43. Arkansas	26,972
Tennessee	36,375	44. Virginia	34,612
Texas	35,491	45. Texas	35,491
Utah	220	46. Tennessee	36,375
Vermont	287	47. Mississippi	44,334
Virginia	34,612	48. North Carolina ..	51,190
Washington	340	49. South Carolina ..	51,536
West Virginia	5,819		

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Wisconsin	1,688	50.	Louisiana	55,691
Wyoming	72	51.	Georgia	63,329
	————	52.	Alabama	66,072
United States....	579,947	United States	579,947	

The vitally significant fact revealed by the first table is the fall in the scale, between 1890 and 1900, of the six great industrial states when measured by the percentage of literacy of their children between the ages of ten and fourteen years.

When measured by the value of their manufactures, New York, Pennsylvania, Illinois, Massachusetts, Ohio, and New Jersey stand at the head of the scale of the states in the order in which they are here printed. When measured by the percentage of their children between the ages of ten and fourteen years able to read and write, in 1900, these states rank altogether differently. Thus New York, instead of being first is fourteenth; Pennsylvania, instead of being second, is twentieth; Illinois, instead of being third, is fifteenth; the other three are Massachusetts, ninth; Ohio, fourth; and New Jersey, twenty-first. Nor is their position in this scale either stable or improving. On the contrary, all the six great states fell from a better relative position during the ten years from 1890 to 1900. In 1890, New York occupied the eighth place, Pennsylvania the sixteenth, Illinois the fifth, Massachusetts the second, Ohio the third, and New Jersey the fifteenth. All alike have fallen relatively to the western states (Nebraska, Oregon, Indiana, Utah and Washington), which have correspondingly risen.

Pennsylvania and New Jersey seem to have com-

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peted for the place of dishonor at the foot of the list of the six great industrial states. Pennsylvania occupied that position in 1890, being then sixteenth in the scale of all the states, and sixth and last of the great industrial states. In 1900, New Jersey had sunk from the fifteenth to the twenty-first place, and now ranks one point below Pennsylvania, when measured by the percentage of her children between the ages of ten and fourteen years of age who are able to read and write.

The relative fall of Massachusetts from the second to the ninth place in the scale may be due to several causes. The influx of French Canadian, Portuguese, Italian, Russian, and Syrian children of the ages between ten and fourteen years is large, and would doubtless continue to depress the position of Massachusetts in the table under consideration. Moreover, Massachusetts was slow to raise the legal age for beginning to work to fourteen years, and to make attendance at school compulsory throughout the full school year to the fourteenth birthday. Not until 1905 did Massachusetts prohibit the employment of illiterate children before the sixteenth birthday.

Discouraging is the position in the first table of the four great Southern cotton manufacturing states in which large numbers of young children are employed in manufacture. In none of the four are eighty per cent. of the children between ten and fourteen years of age able to read and write. Of the four, North Carolina stands highest, as number forty-three in the scale; followed by Georgia, forty-six; Alabama,

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forty-eight, and South Carolina, forty-nine. Lowest in the scale is Louisiana, fifty. Only one of them has risen. North Carolina, which stood forty-five in 1890, stands forty-three in 1900.

An interesting ray of light upon the child-labor problem shines from the first table. The six great industrial states whose descent in the scale it registers, are exceptionally wealthy and progressive in all other respects, but they are the chosen home of child labor on a large scale.

The first table thus confirms the opinion that child-labor and illiteracy are coextensive, and that all these factors, far from being local and to be dealt with by a small group of Southern states, form a great and growing series of national problems. The four great manufacturing states of the South stand at the foot of the scale of states when graded according to the ability of children between the ages of ten and fourteen years to read and write; and the six great industrial states of the North are falling in that scale, simultaneously and conspicuously. Surely there is need of organized effort, national in scope, to ascertain the cause of so sinister a phenomenon, and to remove that cause with the least possible loss of time.

In the second table there are many significant points, one being the position of the six leading manufacturing states, New York, Pennsylvania, Illinois, Massachusetts, Ohio and New Jersey, all nearer the bottom of the scale than the top, with the single exception of Massachusetts which is twenty-sixth in the scale of fifty-two. The other five are

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all in the third group, ranking as follows: Ohio, thirty; New Jersey, thirty-one; Illinois thirty-three; New York, thirty-five; and Pennsylvania, thirty-eight.

When placed according to the actual number of her illiterate children, Pennsylvania stands lowest among the six leading manufacturing states and ranks with the states of the South, coming after Maryland and West Virginia and next above Florida.

Taken together, the six leading manufacturing states had, in 1900, 20,774 illiterate children between the ages of ten and fourteen years, distributed as follows:

Massachusetts	1,547
Ohio	2,048
New Jersey	2,069
Illinois	4,044
New York	4,740
Pennsylvania	6,326
<hr/>	
Total	20,774

It is, of course, to be observed that the six leading manufacturing states receive a vast immigrant population. One conclusion derivable from the table seems, therefore, to be this: that since these states attract immigrants whose children tend to remain illiterate, it is necessary to take energetic measures for dealing with those children; such, for instance, as the requirement that they must learn to read and write English before leaving school to begin to work. It is conceivable that such a requirement, universally and effectively enforced, might permanently remove

one incentive to immigration on the part of the least desirable immigrants—*i. e.*, the hope for wages to be earned by illiterate young children.

In this table, as in the percentage table, it is the great cotton states of the South which constitute the foot of the scale, North and South Carolina, Louisiana, Georgia and Alabama.

The more closely the two lower groups of states are scrutinized, the clearer the inference becomes that the problem of child labor and child illiteracy are twin problems, and that together they demand for their solution no mere sectional effort, but the vigorous determination of the whole people that the years of childhood shall be held sacred to the work of education, free from the burden of wage-earning.

The states which stand at the foot of the scale in both tables are Arkansas, Virginia, North and South Carolina, Mississippi, Louisiana, Georgia and Alabama. These states have no compulsory education laws. They are the states which are commonly designated as the "New South" in discussions of industrial development, particularly in the cotton industry. In them manufacture increases by leaps and bounds while legislation lags behind. As has been pointed out, Georgia deliberately voted at two sessions of the legislature of 1903 to adopt a position ethically lower than that of England at the time of the enactment of Sir Robert's Peel's act, in 1802. The new laws of North and South Carolina, Alabama and Virginia approximate closely to the factory acts of England in 1842, except that the English laws provided for factory inspectors, which the Southern

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states have not yet done. It is with the competition of such communities that Massachusetts has to do when her Committee on the Relations of Employer and Employee recommend the consideration of the feasibility of raising the age for compulsory school attendance to fifteen years, and defer recommending any shortening of the hours of labor of children beyond the limit of fifty-eight hours in one week. In view of facts like these, the child labor problem can never again be regarded as a local problem. It is the problem of the nation as a whole.

The foregoing somewhat desultory observations upon the effort made to establish the right to childhood, reveal how far the whole still falls short of any clear policy of cherishing all future citizens as such in the interest of the Republic.

All legislation thus far has been a series of compromises achieved by stirrings of the public conscience concerning some one enormity here and there. On one side the demands of employers for cheap labor are reënforced by the pressing poverty of parents; and on the other, there has until recently been only the inarticulate child, not always even aware of the injury he was suffering. Then came the trade union eager to be rid of the child in industry, perhaps for the child's good, perhaps in the interest of better wages for the adult competitors. Only sadly recently has the philanthropist come forward as a person to be reckoned with, and last of all, the purchaser of the product, demanding the privilege of buying with a clear conscience the goods for which he pays.

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The resultant patchwork quilt of statutes leaves the children unprotected, as has been shown, in many places, and is nowhere adequate to the needs of the children and the rapid development of industry. It is the purpose of the following pages to suggest what seems reasonable to strive for during the decade 1900-1910.

Legislation Needed in the Near Future.—First of all desiderata is uniformity among the states on the basis of the best which has yet been achieved in the most enlightened communities. For lack of uniformity, progress has been hindered in many states, notably in the glass industry which, during 1904, successfully represented to the legislature of New Jersey that, if deprived of the privilege of employing boys under the age of sixteen years at night, it would migrate to Delaware and West Virginia, where no such restrictions yet await it.

In the interest of uniformity, it seems most practicable to adopt as the minimum age for beginning work, the fourteenth birthday, while endeavoring to bring to this minimum all the children now engaged in street occupations, hitherto exempt from restrictions in nearly all states; and endeavoring, also, to bring to this minimum the statutes of those states which, as yet, prescribe no minimum age (Georgia), or a minimum age of ten years (Nebraska), or twelve years (Alabama, Louisiana, Maine, New Hampshire, North Carolina, North Dakota, Texas, and Virginia), or thirteen years (Rhode Island).

No one acquainted with the diminutive stature of city children of the working class at fourteen years

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of age, can regard the adoption of this standard minimum age for beginning work as final. It is merely the best attainable for the present and the immediate future, in the evolution of child labor legislation.

In the century since the movement for child labor laws began with Sir Robert Peel's act, in 1802, effort has been devoted chiefly to placing about the labor of children restrictions based upon age or school attendance; and these have been found unsatisfactory by reason of the willingness of parents to perjure themselves. It is the tendency of the present to consider the fitness of the child itself for the prospective occupation. Under the present statute of New York, for instance, a child must be "of normal development and in sound health" before receiving the certificate of the local board of health without which it cannot legally begin to work.

As has been shown, effective legislation involves the child, the parent, the employer, the officials charged with the duty of enforcing the statutes, and the community which enacts the laws, provides the schools for the children when these are prohibited from working, supports and authorizes the officers who enforce the laws, prescribes penalties for their violation and assists dependent families in which children are below the legal age for work. In the long run, the effectiveness of the laws depends upon the conscience of the community as a whole far more than upon the parents and the employer taken together.

With the foregoing reservations and qualifications duly recognized, the following schedules are be-

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lieved to outline the substance of the effective legislation which it seems reasonable to try to secure in the immediate future. They deal only with the provisions for the child as a child, taking for granted the provisions for fire-escapes, safe-guards for machines, toilet facilities and all those things which the child shares with the adults.

An effective child labor law rests upon certain prohibitions, among which are the following :

LABOR IS PROHIBITED

- (1) for all children under the age of fourteen years,
- (2) for all children under sixteen years of age who do not measure sixty inches and weigh eighty pounds,¹
- (3) for all children under sixteen years of age who cannot read fluently and write legibly simple sentences in the English language,
- (4) for all children under the age of sixteen years, between the hours of 7 P. M. and 7 A. M., or longer than eight hours in any twenty-four hours, or longer than forty-eight hours in any week,
- (5) for all children under the age of sixteen years in occupations dangerous to life, limb, health or morals.

THE CHILD

Effective legislation requires that before going to

¹ This measure is not now specified in any statute, though it is implied in the statute of New York, enacted in 1903. Bills specifically embracing this provision were introduced into the legislatures of Iowa and Louisiana in 1904.

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work the child satisfy a competent officer appointed for the purpose, that it

- (1) is fourteen years of age, and
- (2) is in good health, and
- (3) measures at least sixty inches and weighs eighty pounds, and
- (4) is able to read fluently and write legibly simple sentences in the English language, and
- (5) has attended school a full school year during the twelve months next preceding going to work.

THE PARENT

Effective child-labor legislation requires that the parent

- (1) keep the child in school to the age of fourteen years and longer if the child has not completed its required school work, and
- (2) take oath as to the exact age of the child before letting it begin to work, and
- (3) substantiate the oath by producing a transcript of the official record of the birth of the child, or the record of its baptism, or some other religious record of the time of the birth of the child, and must
- (4) produce the record of the child's school attendance, signed by the principal of the school which the child last attended.

THE EMPLOYER

Effective child-labor legislation requires that the employer before letting the child begin to work,

- (1) obtain and place on file ready for official inspection papers showing

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- (a) the place and date of birth of the child substantiated by
 - (b) the oath of the parent corroborated by
 - (c) a transcript of the official register of births, or by a transcript of the record of baptism, or other religious record of the birth of the child, and by
 - (d) the school record signed by the principal of the school which the child last attended, and by
 - (e) the statement of the officer of the board of education designated for the purpose, that he has approved the papers and examined the child.
- (2) After permitting the child to begin to work, the employer is required to produce the foregoing papers on demand of the school-attendance officer, the health officer and the factory inspectors.
- (3) In case the child cease to work, the employer must restore to the child the papers enumerated above.
- (4) During the time that the child is at work, the employer must provide suitable seats, and permit their use so far as the nature of the work allows; and must
- (5) post and keep posted in a conspicuous place, the hours for beginning work in the morning, and for stopping work in the middle of the day; the hours for resuming work and for stopping at the close of the day; and all work done at any time not specified in such posted

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notice constitutes a violation of the law. The total number of hours must not exceed eight in any one day or forty-eight in one week.

THE OFFICIALS

Effective legislation for the protection of children requires that the officials entrusted with the duty of enforcing it

- (1) give their whole time, not less than eight hours of every working day, to the performance of their duties, making night inspections whenever this may be necessary to insure that children are not working during the prohibited hours; and
- (2) treat all employers alike, irrespective of political considerations, of race, religion or power in a community;
- (3) prosecute all violations of the law;
- (4) keep records complete and intelligible enough to facilitate the enactment of legislation suitable to the changing conditions of industry.

THE SCHOOL

The best child-labor law is a compulsory education law covering forty weeks of the year and requiring the consecutive attendance of all the children to the age of fourteen years. It is never certain that children are not at work, if they are out of school. In order to keep the children, however, it is not enough to compel attendance,—the schools must be modified and adapted to the needs of the recent immigrants in the North and of the poor whites in the South, af-

fording instruction which appeals to the parents as worth having, in lieu of the wages which the children are forbidden to earn, and appeals to the children as interesting and attractive. These requirements are so insufficiently met in the great manufacturing centers of the North, that truancy is in several of them, at present, an insoluble problem. No system of child-labor legislation can be regarded as effective which does not face and deal with these facts.

The evolution of the vacation school and camp and play centers promises strong reënforcement of the child-labor laws, which are now seriously weakened by the fact that the long vacation leaves idle upon the streets children whom employers covet by reason of the low price of their labor, while parents, greedy for the children's earnings and anxious lest the children suffer from the life of the streets, eagerly seek work for them. Nothing could be worse for the physique of the school child than being compelled to work during the summer; and the development of the vacation school and vacation camp alone seems to promise a satisfactory solution of the problem of the vacation of the city child of the working class.

THE COMMUNITY

Effective child-labor legislation imposes upon the community many duties, among which are

- (1) maintaining officials—men and women—school-attendance officers, health officers, and factory inspectors, all of whom need
 - (a) salary and traveling expenses,

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- (b) access at all reasonable times to the places where children are employed,
- (c) power to prosecute all violations of the statutes affecting working children.
- (d) tenure of office so effectively assured that they need not fear removal from office in consequence of prosecuting powerful offenders;
- (2) maintaining schools in which to educate the children who are prohibited from working;
- (3) maintaining vital statistics, especially birth records, such that the real age of native children may be readily ascertained;
- (4) maintaining provision for the adequate relief of dependent families in which the children are not yet of legal age for beginning work.

More important, however, than the enactment of the foregoing provisions is the maintenance in the community of a persistent, lively interest in the enforcement of the child-labor statutes. Without such interest, judges do not enforce penalties against offending parents and employers; inspectors become discouraged and demoralized; or faithful officers are removed because they have no organized backing while some group of powerful industries clamors that the law is injuring its interest. Well-meaning employers grow careless, infractions become the rule, and workingmen form the habit of thinking that laws inimical to their interest are enforced, while those framed in their interest are broken with impunity.

Upon parents there presses incessant poverty, urging them to seek opportunities for wage-earning

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even for the youngest children; and upon the employers presses incessant competition, urging them to reduce the pay-roll by all means fair and foul. No law enforces itself; and no officials can enforce a law which depends upon them alone. It is only when they are consciously the agents of the will of the people that they can make the law really protect the children effectively.

A United States Commission for Children.—If the right to childhood is recognized, it follows that the welfare of the children is a legitimate interest of the nation, for the right rests upon the future citizenship of the children. The interest of the nation, as such, has not hitherto found articulate expression, and it is desirable that it should do so. It is therefore suggested that there be constituted a Commission for Children, whose functions should be to correlate, make available, and interpret the facts concerning the physical, mental and moral condition and prospects of the children of the United States, native and immigrant.

The proposed commission might be composed of men and women, representing different parts of the country, for the purpose of promoting the vital and social efficiency of the children of the United States. It should do for the states, cities and smaller communities what the Department of Agriculture does for the farmers,—make accessible to them the latest word of science and the latest methods of applying it. The commission might coöperate with the Bureau of Education, for instance, in disseminating facts as to the grades in the public schools from which the chil-

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dren leave, and the age of the children at the time of leaving, in the different parts of the country; it might coöperate with the Bureau of Labor in popularizing the principles upon which child-labor legislation should be further developed; and with the Census Bureau in focusing attention upon the fact that in 1900 there were in the Republic 579,947 illiterate children between the ages of ten and fourteen years, of whom about 510,000 are in thirteen states, and the remaining 70,000 are scattered throughout the remainder of the United States. For lack of a recognized national official body devoted to all the interests of the children, the facts gathered by the three above named departments remain uncorrelated and largely unused. If they are applied at all, it is by volunteer organizations which exist in some states and are lacking in others, and any results obtained, therefore, benefit the children in a part of the country, but not in the whole country.

The problems suggested as forming, at first, the probable field of work of the Commission are all vital to the welfare of the Republic. They are interrelated in such complex ways that it is very difficult to state them in logical order. The following list is purely tentative and is framed in the hope that it may suggest constructive criticism.

PROBLEMS

1. Infant Mortality.
2. Registration of Births.
3. Orphanage.
4. Desertion.

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5. Illegitimacy.
6. Degeneracy (sub-normal childhood).
7. Delinquency.
8. Offenses against Children.
9. Illiteracy.
10. Child labor.

The imperative need of such a commission becomes apparent as soon as the first problem, infant mortality, is named. If lobsters or young salmon become scarce or are in danger of perishing, the United States Fish Commission takes active steps in the matter. But infant mortality continues excessive, from generation to generation, in perfectly well-defined areas;—yet no one organ of the national government is interested in the matter sufficiently even to gather, collate and publish consecutive information about this social phenomenon. On the contrary, infant mortality, however excessive, continues to be generally regarded as a matter safely left to the local officers whose incompetence or lack of legal power it proves. Mere constructive criticism from an authoritative source, consecutively afforded by the proposed commission, could not fail to have a stimulating effect upon such local officials.

Orphanage is now generally recognized as a phenomenon social and permanent. To it is due much pauperism, delinquency and permanent degeneracy among children. It is a matter of national importance that continuous investigations should be carried on covering methods of safeguarding adult life;—insurance, pensions for widows with young children, adoption of total orphans, asylums and

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methods of boarding out children. The children are the future Republic, the orphans no less than those who have parents; and the maintenance of their vital efficiency is no less essential than the care of fish, forests and Indians by the United States Government.

With the development of disease and accidents incident to occupations the number of fatherless children in the working class increases. No employers' liability legislation yet devised has made adequate provision for the maintenance of surviving little children of workmen who perish.

Desertion and illegitimacy are phenomena which, from the child's point of view, are to be classed with orphanage. It is desirable that methods of enforcing paternal responsibility should be devised to relieve the community of the support of children thus cruelly and unnaturally fatherless.

The allied problems of orphanage, desertion and illegitimacy connect on the one hand with the protection of life, limb, health and morality of the adult workers; and on the other with child labor, illiteracy, degeneracy and delinquency.

While a few cities have established children's courts devoted to the decision of cases affecting children, and probation officers for the care of juvenile delinquents, it remains true that, in by far the larger part of the country, the stockade or the county jail is a school of crime for first offenders. On the other hand, the widely prevalent method of crowding dependent and delinquent children together in institutions promotes both dependency and delinquency;

while the reckless placing out of children at a distance from their own original homes has its own serious dangers. The indifference of local authorities to these subjects of vital importance to the rising generation is due chiefly to ignorance of better ways. But the desultory propaganda of volunteer bodies is inadequate to securing within any calculable time, improvements which might readily and rapidly be brought about by the dissemination, with method and continuity, of the needed information by a Commission for Children.

Child labor can never again be regarded as a matter of local interest in a few states, with cotton mills in the South, and canneries from Maine to the Pacific, employing children at all hours, in ever-increasing numbers as the industries develop. The lack of legislation in one state renders it excessively difficult to establish protective restrictions upon work in another state having the same industries;—and the worse inevitably checks progress in the better.

It is, at present, impossible to secure comprehensive, trustworthy, current information as to the conditions of labor of children in the different states, except by having recourse to some volunteer organization which, in turn, secures its facts by correspondence with the officials of fifty-two states and territories. Moreover, the publications of private societies cannot assure the continuity of investigation which a Commission could give. It is believed that the consecutive publications by a Commission, of the child-labor laws of the different states in popular form (as the Department of Agriculture

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furnishes in popular form information needed by farmers), as rapidly as the laws are modified, might be the means of securing approximately uniform legislation in this important field within a few years.

The foregoing list of problems with the comments upon them, are, of course, mere suggestions of what a Commission would find awaiting it in the way of investigation and dissemination of information on behalf of the future citizens of the Republic. Obviously the creation of such a Commission will mark one more important recognition of the right to childhood and will register one more ethical gain.

CHAPTER III

THE RIGHT TO LEISURE

The effort to establish the right to leisure was a distinctive movement of the nineteenth century, accompanying the development of machinery. It assumed Protean forms, among others that of Sunday rest, the Saturday half-holiday, Decoration Day, Labor Day, Lincoln's Birthday, Washington's Birthday, St. Patrick's Day, Good Friday, and Easter. The early closing of the stores, wherever accomplished, is one result of this effort. The prohibition of the work of women and minors at night was an important aspect of the movement, and the effort on behalf of child labor legislation is largely directed towards securing fourteen free years for school and wholesome growth before children enter upon the life of steady work. In its most virile form, the effort to establish the right to leisure was known as the ten hours movement, and later as the eight hours movement.

America having produced no great philanthropic leader devoted to securing leisure for the young and defenseless workers, no Lord Shaftesbury, the task of establishing their right went by default to the trade unions, to whom is due the credit for all child labor legislation prior to the year 1889. Now, how-

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ever, the effort has become national in its scope, enlisting the most diverse advocates. Mr. Grover Cleveland and other members of the National Child Labor Committee, and the General Federation of Women's Clubs, in striving to stop the work of children at night in manufacture and commerce, are as truly enlisted in behalf of the right to leisure as are the miners in Colorado, the butchers in Chicago, and the garment workers in New York. The National Educational Association, working to prolong the period of compulsory attendance at school, and the National Congress of Mothers, with its standing committee on child labor, are pledged to the same endeavor. To educate the purchasing public to act in considerate recognition of the right of the clerks to leisure is one of the reasons for being of the Consumers' League. However different the methods of these diverse organizations, their goal is the same,—the establishment of reasonable daily leisure in the lives of working people.

The Supreme Court of the United States has made plain the way by sustaining the constitutionality of statutes establishing the working day of eight hours for persons in the employ of the federal government, in the employ of states or municipalities under contract, and in the employ of corporations where the nature of the occupation may be injurious to health.

The establishment of universal leisure is increasingly recognized as a social aim, an effort to be participated in by all those who care for the social welfare, and as a national effort, since, under the pres-

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sure of competition, the conditions prevailing in any industry must be as nearly uniform as possible, and one part of the country cannot long maintain itself far in advance of a different part having identical industries, a truth which finds conspicuous illustration in the experience of New England suffering under the pressure of competition of the textile mills of Georgia.

The struggle for the shorter working day is commonly described as the effort of the laborer to give as little exertion as possible in return for the pay which he receives and many workingmen passively accept this statement of the animus of their movement. It is, however, susceptible of interpretation as the effort of wage-earning people to obtain, in the form of leisure, a part of their share of the universal gain arising from the increased productivity of every occupation, and due to the incessant improvement of machinery.

Obviously the characteristic feature of the industrial life of the nineteenth century was the unprecedented increase in the output of all branches of production. Human needs were satisfied as never before; famine was restricted before the close of the century to portions of Russia and India, where misgovernment and imperfect means of transportation together prevented the adequate production and circulation of foodstuffs. Clothing and fuel of new and abundant kinds removed the fear of destruction by cold. Shelter for people of all sorts and conditions underwent transformations undreamed of in previous centuries. The fundamental ethical ques-

tion of the century was, in essence, the equitable distribution of these newly acquired possessions of the human race.

More precious, perhaps, than any of those enumerated is the immaterial, imponderable human by-product,—leisure. Once the heritage and distinctive privilege of a small class in any civilized community, leisure was produced during the nineteenth century in such abundance as to become the accepted right of a large proportion of the people. Yet, by reason of its inequitable distribution, it remained, in the crude and unsocial form of unemployed time, the bane and sorrow of large sections of the working-class, who were constrained to devote generations of organized effort to regulating, equalizing, and redistributing their working-time and their free time, endeavoring to transmute accidental, unsocial idleness into regulated and beneficent daily leisure.

Assured daily leisure is an essential element of healthy living. Without it childhood is blighted, perverted, deformed; manhood becomes ignoble and unworthy of citizenship in the Republic. Self-help and self-education among the wage-earners are as dependent upon daily leisure as upon daily work. Excessive fatigue precludes the possibility of well-conducted meetings of classes, lodges, coöperative societies and all other forms of organized effort for self-improvement. No experience of residents in settlements in the congested districts of the great cities is sadder than the disorganization which befalls their evening clubs and classes when Christmas

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approaches and the ablest young people are detained for overtime work, the study and effort of the other members is disorganized, and failure of the whole undertaking often follows.

As machinery becomes increasingly automatic, and the work of the machine-tender reduces itself more completely to watching intently the wholly monotonous performance of the one part confided to his care, leisure becomes indispensable for him in order to counteract the deadening effect upon his mind exercised by his daily work. Instead of educating the worker, the breadwinning task of to-day too often stupefies and deforms the mind; and leisure is required to undo the damage wrought in the working-hours, if the worker is to remain fit for citizenship in the Republic. Without regular, organized leisure, there can be no sustained intelligence in the voting constituency.

In those occupations in which long hours of work prevail, the employees are obliged to live near their place of work, and that congestion is thus intensified which is one of the more unfortunate features of life in large manufacturing cities. Shortening the hours of labor gives to working people a wider range of selection in the location of their homes, thus benefiting wives and children as well as the operatives themselves.

Daily assured leisure serves a purpose of the highest social value by enabling the wage-earner to husband that resource of nervous energy which is required to continue active working-life after the passing of youth. In the garment-trades, men are

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old at forty and women are superannuated at thirty, largely by reason of the alternations of overwork and enforced idleness, and the absence of that regularly recurring sufficient period of rest between the close of one day's work and the beginning of the next, which alone permits body and mind to bear years of continuous work without wearing out. Premature old age is induced by overwork as effectively as by dissipation; and old age in the wage-earning class means dependence, if not pauperism. To assure a regular period of fifteen hours between one day's work and the next for young women and girls engaged in manufacturing and commerce would undoubtedly do as much to prolong their years of self-support and diminish their period of enforced dependence upon others as any measure avowedly in the interest of hygiene and public well-being which could be enacted.

The philanthropic world is all astir on behalf of the crusade against tuberculosis. Funds are readily forthcoming for the foundation of sanatoria for the use of working people, especially for young girls and children. But tuberculosis is promoted by overwork as much as by any other single cause. To shorten the hours of daily labor, to afford daily leisure for rest and recreation to young employees during the years of life in which the susceptibility to infection is greatest, years which coincide with the term of employment of girls and women in largest numbers, is quite as clearly a life saving service as to build and maintain sanatoria. Moreover, the loss of time involved in recovery from

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tuberculosis is accompanied by expenses to the patient, her family and the community which might well all be spared, were the young worker permitted to escape this enforced idleness by enjoying in due time a rational measure of daily rest and freedom.

Vice flourishes wherever self-support for honest working-women is unusually difficult, and the sweating-system is breaking down to an alarming degree, in New York City, that domestic righteousness which, for thousands of years, has distinguished the people of Jewish faith. To establish effective restrictions upon the hours of labor in the needle-trades would equalize the burden borne by these workers, spreading work over more days and weeks, granting more daily leisure, and thus making righteous living easier for tens of thousands of young working people whose traditions are entirely honorable, but who are now subjected to a pressure to which all too many victims succumb.

It may be fairly claimed, then, that the establishment of regular daily leisure contributes to the health, intelligence, morality, lengthened trade life, freer choice of home surroundings, thrift, self-help and family life of working people. Granted that not all workers make equally valuable use of free time, just as members of the leisure class vary in the uses to which they apply their leisure, it remains true that, without free time, these benefits are impossible. To be deprived of leisure is to be deprived of those things which make life worth living.

Leisure seems to have come to different groups of people in different ways;—to some automatically

without exertion on their part; to others as the result of long, painful struggle; to many not at all. The portion of society to which leisure has not come consists, on the one hand, of the great body of children and young girls in the textile and other industries in states in which no laws yet define the limit of their working day and working week; and, on the other hand, of the mass of unskilled workingwomen as unorganized and defenseless as the children themselves.

The Unsought Leisure of Prosperous Women.—The people to whom leisure has come unsought, a free gift of the new industrial order, are the women in prosperous circumstances. Never before in the history of civilization have women enjoyed leisure comparable to that which now falls to the lot of those in comfortable circumstances in America. The modern conveniences of the city or suburban home reduce to a minimum the unavoidable exertion (except such as is demanded by aseptic cleanliness enforced by the fear of disease germs in dust and all that harbors dust!). For the prosperous housekeeper flowing water, gaslight and electricity, modern facilities for heating and cooking, foods prepared outside the home, garments bought, whether ready-made or made to order,—all these contrivances, together with the exodus of the home-industries, yield to women a leisure which they accept as an unqualified right. The wives of tens of thousands of business men and well-paid employees enjoy unquestioningly, and as a matter of course, a degree of leisure such as formed the exclusive

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privilege of a small aristocracy in earlier centuries. The beneficent social and philanthropic activities of public spirited women and the baneful epidemic of gambling at cards which has run riot for several years and shows no tendency to diminish, are twin offspring of this unearned leisure.

As employers of labor in the home, women have been called upon to share with their domestic employees some of the new-found leisure, and they have not always discerned the importance of recognized and regulated free time at the disposal of the employee as an element in determining the quality of the "help" available in the labor market which they frequent. Sunday rest, the Saturday half-holiday, early closing, and the prohibition or restriction of evening work, have contributed to make work in manufacture or commerce more attractive to large classes of young girls in highly developed industrial communities, than household labor with its indeterminate hours. And where women as employers have discerned the intimate relation between the industrial life about them and the domestic life under their own roof, they have naturally viewed with a critical eye that tendency towards work in other forms of industry in preference to housework, which presses with ever increasing effectiveness upon their personal arrangements.

Women in their homes, in the full enjoyment of leisure as a human right which no one disputes, see from afar and often unsympathetically the effort of the wage-earners to secure for themselves similar leisure, either by means of statutory provisions or

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by trade-agreements. It requires cultivation of the imagination to enable women thus fortuitously endowed with leisure to perceive an organic relation between their own possession of it and the productive activity of other women, and of children, in the manufacture and distribution of many things which were formerly prepared within the home; to make the connection between this free gift of the new industrial order to themselves and the struggle of the garment-workers, for instance, to secure by organization and trade agreements, and by statutes, the assurance that the needle-workers need not work more than eight hours in one day. The conductor of a railway train has regular "runs" upon which he can count in advance, and in accordance with which he arranges his seasons for sleeping, eating and recreation. His wife enjoys the leisure which has come to her unsought. He can understand the effort of the garment-workers to maintain their organization in its most militant form, because he assures the permanence of his own leisure by helping to sustain his own organization with its trade agreements. But his wife cannot so readily understand or sympathize with the motive of the garment-workers, because the leisure which distinguishes her from her great-grandmother has come to her through no effort of her own, but automatically by the introduction of mechanical improvements and by the exodus of the industries from the home. It may be urged that the leisure of prosperous women is only apparent; that each improvement has entailed fresh duties of administration; that the stand-

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ard of living has been so raised that their time is as fully occupied as it ever was. From the economic point of view, however, the new occupations are distinctly of the leisure type,—not of any recognized productive or distributive type.

To the credit of women of the prosperous class it must be said that, within recent years, many of them have been making active and intelligent efforts to establish legal claims to leisure for children and for women industrially employed. The Saturday half-holiday, the summer vacation for clerks, the child labor laws, and the prohibition of work at night for women and children have had no more faithful advocates among the wage-earners themselves than among members of the Consumers' League, the Church Association for Improving the Condition of Labor and the women's clubs. Just in proportion as women who enjoy leisure in their homes come to see how far they owe that enjoyment to the work of other people, and to recognize the just claims of those others to a share of leisure, may we reasonably expect that the number and effectiveness of such organizations will multiply. And it will appear in the course of the present discussion that the need for such organizations is an abiding need, aside from the maintenance of the organizations of the workers themselves.

The share of credit due to these participants in the effort to establish the right to leisure is the greater because, in their capacity as housekeepers, they come into contact with precisely that portion of the working-class whose method of establishing

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leisure for themselves appears to be most trying. Gas-fitters, plumbers, carpenters, upholsterers, paper-hangers, plasterers, painters, and glaziers have not, on the whole, distinguished themselves, in recent years, by that sweet reasonableness which might have ingratiated them and their cause with families whose homes have needed alterations and repairs. And the ability of thousands of house-mothers to rise above their personal grievances and advocate a reform the attendant disadvantages of which they have been made to feel in no gentle manner, speaks well for the intelligence and the principle of modern women.

Enforced Idleness is not Leisure.—In some occupations the nature of the work to be done involves interruptions which force the workers to await the resumption of activity; and these interruptions may be welcome and beneficent, or they may be veritable paths to destruction, their effect depending upon the circumstances under which the working people are able to meet them.

Thus the sailor spends weeks on land in enforced idleness through no choice of his own but because the vessel must load and unload, or must await the regular day of sailing. Jack ashore affords the classic example of the workingman harmed by unorganized and, therefore, unprofitable, if not actively injurious, idle time as contrasted with regular, organized, beneficent leisure. No stronger argument need be found for the statutory establishment of daily leisure for employees in all trades in which that is possible, than the evils entailed upon sailors

by the impossibility of distributing their idle time in ways wholesome for themselves.

The long leisure of the northern farmer's winter, recurring and regularly prepared for, has, without doubt, contributed much to the general high level of intelligence and character among the native population of New England and the Northwest. The picture of the boy Lincoln studying by the light of the fire on the hearth gripped the imagination of the American people because it appealed to the personal experience of a multitude to whom the leisure of the hearthstone was the earliest recollection. The sharpest possible line of demarcation divides citizens whose experience includes the long country winter from those city-bred, to whom the seasons mean little more than the change from the exhaustion of summer heat to a more bracing atmosphere, the round of their work having no relation to the visible order of nature, and their leisure being assured them by circumstances unrelated to the time of year. The farmer's family, accustomed to work without ceasing at the harvest, as they rest at length during the winter (both experiences being dictated by the nature of the work to be done and the season of the year, over which they have no control), cannot readily understand why thousands of tailors should strike for months together, at the height of the season, in the hope of working an hour a day less throughout the following year.

Yet it is by no means accidental that, in the garment-trades, strikes habitually have to do with the maintenance of a trade organization, or with the

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hours of labor, because the garment-workers, more than any other wage-earners, suffer the disadvantages both of overwork and of unemployment. The garment-workers endure the "dull season" because garments vary with the season and orders are "slack" or "rush" without reference to the preference of the needle-workers. One part of their year brings with it overwork such as occurs in no other occupation, while another entails idleness on the hardest terms known to modern industry. The tailors' long struggle to distribute their work over the longest possible series of weeks, by shortening each working day to ten, nine, or eight hours is, in essence, a struggle to attain reasonable leisure in place of deadly haste followed by weeks or months of corroding idleness.

While the winter leisure of the farmer is made safe by the assured supplies of food, fuel and shelter prepared in advance for the season's need, the annually recurring dull season in the garment-trades is a period of anxiety and suffering, when the grocer's bill grows as large as his good will ventures to permit, and eviction from their tenement-dwelling is a calamity to be expected and endured by the garment-workers' families as the fortune of war. In this there is no element of wholesome leisure. The words "dull season," originally referring to the state of the trade from the employers' point of view, describe but faintly the black despair which that season, under the sweating-system, involves for the workers in the garment-trades.

In the needle-trades half the employees are wom-

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en, young, non-voting, temporary members of the body of wage-earners pending marriage or disability. No part of the industrial army grows so rapidly as the contingent of young girls between fourteen and twenty years of age; and no part is so void of initiative for its own welfare, so unfit to assert or maintain any right. Beginning work at the age of folly, they readily accept as the regular working day ten hours in twenty-four, increasing this to any length allowed by the statutes, and working frequently without extra pay merely under the threat of dismissal in case of their refusal. Of their own initiative, these young needle-workers would never secure the half-holiday, a summer vacation with or without pay, or even the enforcement of the legal restriction upon their regular working time. They are a perpetual hindrance to the efforts of the men who work with them to secure stable employment and reasonable leisure. Overwork seems to come to these girls as blindly as leisure has befallen the women in the well-to-do households.

In the needle-trades, the effectual establishment of the legal working day and working week serves, wherever this has been accomplished, as for instance, in Massachusetts, to mitigate both the enforced overwork and the enforced idleness which characterizes those trades when left to the free play of industrial forces. Where the working time is effectively limited, preparations are made systematically, in advance of the height of the season, for meeting the coming pressure. Space and machinery are provided, and extra hands are trained, by

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preparing stockwork, for the finer work to be demanded of them later. Thus some of the unemployed are temporarily absorbed into the regular industrial army, and the contrast between the extremes of the seasons is mitigated.

It is evident upon close acquaintance that in the garment-trades the injurious differences of season are only in part due to the conditions inherent in the trades themselves. They are not like the midwinter cold and midsummer harvest heat in the experience of the farmer. They are far more subject to control than the managers of the industry have ever been willing to admit. Moreover, the general purchasing public has vastly more power of initiative, control and restraint than it has ever been aware of, by means of the placing of "rush" orders, on the one hand, and of voluntarily regulating the times of its buying on the other. This has already been indicated in the matter of Christmas shopping and its bearing upon the cruel overwork of children at that season. The garment workers are not so obviously present as the children in the stores, and it requires, therefore, more sympathetic imagination to enable the shopping public to make the connection between the excessive exertion which alternates with ruinous idleness of the machine workers, and its own heedless crowding of the shopping season into a few weeks in the spring and fall.

Increased Speed Calls for Leisure.—In the capacity of inspector for the National Consumers' League it has been the fortune of the writer to visit and inspect a large number of factories in the

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stitched muslin underwear trade during the past five years. In the course of that time there has occurred a development of machinery so significant in its consequences as to seem worth describing somewhat at length as a concrete illustration of the process which is discussed more abstractly throughout the present chapter. In all the best factories within this trade the speed of the sewing-machines has been increased so that they set, in 1905, twice as many stitches in a minute as in 1899. Machines which formerly carried one needle now carry from two to ten, sewing parallel seams (for bones in waists, or for tucks, or merely for decorative stitching). Thus a girl using one of these machines is now responsible for twice as many stitches at the least and for twenty times as many stitches at most, as in 1899. Some girls are not capable of the sustained speed involved in this improvement, and are no longer eligible for this occupation. Those who continue in the trade are required to feed twice as many garments to the machine as were required five years ago. The strain upon their eyes is, however, far more than twice what it was before the improvement. In the case of machines carrying multiple needles this is obvious; but it is true of the single-needle machines also. It is the duty of the operator to watch the needle so intently as to discern the irregularity caused by a broken thread or broken needle, and to stop the machinery by pressing an electric button before any threads are cut by the broken needle, or any stitches of the seam are omitted because of the broken thread. Now, when

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the needle set twenty-two hundred stitches a minute, as was the case in 1899, the writer, whose eyes are unusually keen, could see the needle when the machine was in motion. At the present speed, the writer, whose eyes have remained unimpaired, is wholly unable to see the needle, discerning merely the steady gleam of light where it is in motion. To meet this difficulty, which occurs regularly in the case of the operatives, it is now the custom to suspend an electric light directly above the machine, so that a ray strikes the needle. The strain upon the eyes of the operators is almost intolerable, and a further winnowing-out of the women eligible for this occupation follows the introduction of the present method of lighting.

It is reasonable to inquire what benefit accrues to a machine operator who completes twice as much work in 1905 as in 1899, and the writer has made this inquiry whenever opportunity has offered. On the whole, it appears that there has been no proportionate gain for the operator. If all the gain that is made by the improvement in the machines went to the operators in the form of increased wages, it is doubtful whether it would be compensation for the additional strain upon their eyes and nerves. But no such share of gain falls to them. Their wages are calculated upon the same basis as in 1899, namely, that employees of the required speed and skill can be obtained in the required number for six dollars a week, irrespective of their output of work. In conversation with employers the writer is assured, from time to time, that piecework prices are

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regularly calculated to afford a total of six dollars a week for skilled workers, the stock phrase being: "If a girl cannot earn six dollars a week at machine work after she has been doing it from six weeks to three months, she is not adapted to the work, and it is better to put another girl at her machine." On the part of the girls the statement is very generally made that, in places in which the supply of help is abundant, the proportion of girls receiving less than six dollars is kept large by constantly changing hands, dismissing those whose wages are growing higher with increasing skill, and taking on beginners. Combined with this constant changing goes a frequent rearrangement of piecework prices, such that only a small minority of the girls in a factory ever rise above the dead level of six dollars a week, the same sum that was paid in 1899 for half the work now done.

One skilled worker who left a factory for four years and returned to the same machine which she had left, found it speeded up to double its former capacity. Her work was doubled, but her wages increased only from six dollars a week to seven, though she was one of the most skilled persons in her trade, an experienced, strong, willing operator. This girl was asked who, in her opinion, profited by the doubling of the output of her machine. In reply she said: "I get a dollar a week more. The company makes something out of the improvement, or they would not have made it. But there have been so many cuts in prices that the company don't get as much as you'd think for doubling the speed

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of the machines. I guess the people that buy the garments must get most of the difference; they can get so many more garments for the same money."

There is no doubt that this sewing girl was entirely correct in her estimate of the effects of doubling her work. The purchaser, in the long run, profits by every improvement in machinery and in the speed of the workers. But the girls who stitch underwear are not only working the same number of hours as in 1899; they are wearing themselves out at a rate of speed such that the term of their whole working-life must inevitably be greatly shortened. The nervous energy required from day to day is more than can be supplied by the free time between one day's work and the next. A phrase in which they commonly describe the experience of girls who have dropped out of the trade tells the whole story: "She got too slow,—she couldn't keep up with her machine any longer."

There is no immediate prospect of any material improvement in the money wages paid to operators in this trade; for the employers have at command, not only tenement-house workers and institutions maintained out of the public funds and, therefore, willing to do sewing for merely nominal compensation; they have also the pupils of the many charitable and reformatory schools which persist in preparing every available girl for this most undesirable of all skilled occupations. Since the wages of the sewing machine operators are determined, not primarily by the amount of their output, but by many other considerations (the pressure of the tenement-

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house workers, the institution workers, and the recruits in the trade sent out from the institutions, etc.), there seems to be no need to fear that they would lose in wages if their hours of labor were reduced by the enactment of a statute restricting their working time to eight hours in one day and forty-eight in one week. In the interest of their health this change appears to be indispensably necessary. It has been, however, impossible for them to make any permanent improvement in the conditions of their employment by unaided effort of their own. There is no inclination visible on the part of employers to reduce the hours of work. On the contrary, the manufacture of stitched white muslin underwear has become as completely a season trade as the preparation of Christmas tree decorations or Easter bonnets. Meanwhile, the number of years during which a girl can continue to earn a living at a sewing machine diminishes with every improvement in her machine.

Methods of Establishing the Right to Leisure.

—By the education of public opinion something has been accomplished towards establishing leisure in certain occupations. Thus an appeal has of late been made, with promise of increasing success, to the more kind-hearted and conscientious among the stockholders of Southern cotton-mills to vote their stock in ways calculated to obtain more humane hours of labor for the women and children employed in those mills. The hours of labor of the clerks and cash children in the stores of many cities have been improved in consequence of the efforts of the Con-

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sumers' Leagues in some places, and of the Retail Clerks' Protective Associations in others, to induce the shopping public to exercise consideration of the employees in arranging the hours of shopping.

The cigar-trade has long enjoyed the benefits of the short working day by reason of the relatively successful effort of the cigarmakers to apply in practical form the principle which all trade unionists acknowledge, and upon which thousands of them conscientiously act. Millions of dollars have been spent in advertising their label; cigars bearing it are made only in shops in which the working day is limited to eight hours; and working men of all trades have taken the trouble to give the preference in buying the cigars thus recommended. Here, therefore, the establishment of leisure for the workers has been accomplished by the effort of the workers themselves. The limitations inherent in this method appear, however, when certain large employers, selling cigars to customers not interested in the subject, employ young girls who are not part of any organization, and can be induced to work as long as the law allows. It is an interesting and significant fact that the organizations mentioned as using this method are among the most persistent advocates of legislation restricting the hours of labor, acting on the principle that not one but all methods of protecting the workers in their right to leisure must be followed, and taught by experience how far more effective is their effort when directed towards the enforcement of statutes than when confined to persuasion alone.

CHAPTER IV

JUDICIAL INTERPRETATION OF THE RIGHT TO LEISURE

The right to leisure has long been striven for by means of trade agreements between employers and employees, and of statutes, state and federal. The statutes are many and diverse, but those with which the present discussion is concerned are of three kinds :

Statutes stipulating the hours of work of public servants, as letter carriers and printers in the government printing office ;

Statutes restricting the hours of labor of women and children ;

Statutes which are now for the first time upheld by the courts, restricting, in certain occupations, in the interest of the public health, the hours of labor of adult male employees working for corporations or individual employers.

Until it has been sustained by the Supreme Court of the United States, a statute is merely a trial draft, the enactment of which is but the first step in its development into valid law. In discussing the gains which have been made in the direction of establishing the right to leisure, it is, therefore, necessary to consider the leading cases which determine the

line of progress.¹ Two cases decided by state courts of last resort are still effective in preventing the enjoyment of the right to leisure by wage-earners in those states, although the Supreme Court of the United States has, in regard to the subject matter of each decision, subsequently pronounced in favor of the constitutionality of the statutory right; and it is, therefore, reasonable to believe that, in the course of time, the state courts will reverse their present positions. These are the cases of *Ritchie vs. the People* (Supreme Court of Illinois, March 5, 1895), and the *People vs. the Orange County Road Construction Company* (April 25, 1903, Court of Appeals of New York).

The Right to Leisure Accorded to Public Servants.—The government of the United States, in the year 1892, recognized the right to leisure by limiting to eight hours in one day the working time of laborers in its employment.

Since that time it has paid extra for overtime work. The same right is recognized for many thousand employees directly engaged in the service of states and municipalities. In all these cases the hours of labor are restricted by statute, state or federal, enacted through the exertions of the employees themselves or of men engaged in the same or kindred work.

¹ These are *Holden vs. Hardy* (U. S. Supreme Court, Feb. 28, 1898); *Atkins vs. the State* (U. S. Supreme Court, Oct. Term, 1903); *Lochner vs. New York* (U. S. Supreme Court, April 19, 1905); and that older decision which sustained the federal act of 1892 limiting to eight hours the working day of persons employed under contract directly by the Government of the United States.

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No claim has been made that it would necessarily injure the health of the adult employees engaged in these occupations to work more than eight hours in a day. It is, however, their preference to work no longer than that. They are politically powerful enough to establish their preference by procuring legislation; and in the case of the printers, they have established the right before the Supreme Court of the United States. The work of the nation, the states and the municipalities appears to be done, on the whole, satisfactorily to the people and to the employees. Such scandals as have arisen in the public service seem to have had no relation to the daily work of the rank and file.

It is worthy of note that these employees are engaged at work in which they are subject to no pressure of competition from women and children. The moderate hours of work doubtless explain, in part at least, the eagerness of men to secure public employment, even where defective civil service laws make promotion excessively difficult and give the public servant scant hope of any considerable increase in his remuneration.

Convinced of the advantage derived by men in the direct employ of the various governments, federal, state and municipal, from the short working day prescribed by law, many trade organizations have long and persistently striven to secure from Congress and from state legislatures, laws requiring that contractors employed by the government shall be bound by the terms of their contracts to limit the day's work to eight hours. The workingmen insist

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that work for a government contractor is indirectly work for the government, and should be performed upon the same terms, assuring to the worker the same advantages. As government contracts ramify into ever-increasing series of industries, such statutes would establish the usage of the shorter working day to an extent and in directions little foreseen by those who are not personally interested in the subject.

The unimagined ramifications of the work of the United States Government done under contract may be indicated by the fact that the writer has seen letter pouches, for the use of the United States railway mail service, sewed by small boys detained in a reformatory institution for young children carried on by a religious sect, at the cost of the treasury of the city of New York. The government contract had been awarded to a manufacturer who had farmed out a part of it under the sweating-system, to be executed by child labor, under conditions deemed wholly inadmissible by enlightened modern opinion. This ramification of government contract work into the sewing trades, the sweating-system, and the perversion of child-saving philanthropy is cited merely to intimate how far reaching, in its potential beneficent effects, is the effort of the workingmen to secure statutory provision that, in all contracts for government work, the right to leisure shall be recognized by a stipulation binding the contractor to the working day of eight hours.

The effort thus to secure statutory recognition of their right to daily leisure when employed indirectly

by the government through contractors, is made as vigorously by men in industries in which trade agreements are available as in other trades. From their long, persistent effort for this legislation, it appears that they recognize the desirability of statutory recognition of the right, as contrasted with the conquest of leisure, in each individual case, by means of trade agreements.

Viewed as an infringement of his freedom of contract, the workingman's eagerness for statutory restriction upon his hours of labor may seem to be self-stultification. But viewed as an effort to establish a legal claim to a settled modicum of daily leisure, it becomes at least intelligible. There may well have been a time when a usury law seemed to inflict hardship upon a borrower eager to pay any price for an urgently needed loan. Yet it was the debtor class who desired and ultimately obtained the enactment of usury laws. They wished to be rid of their freedom to contract for lifelong indebtedness, as the wage-earner to-day wishes to be rid of his present freedom to bargain away what he regards as an undue share of his twenty-four hours, and experience has demonstrated the correctness of the instinct which guided the effort of the debtors.

Every year the body of workingmen voters pledged to secure from the various governments legislation prescribing the so-called "eight hour clause" in all contracts, grows larger and more insistent; and every year the industrial territory involved in such contracts enlarges its boundaries and becomes more important. The recent irrigation

undertakings of the United States in the arid regions sufficiently illustrate the rapidly increasing scope of these contracts.

Although Congress is far behind the governments of England and Canada in guaranteeing to its indirect employees, working for it through contractors, the same leisure which it has long granted to its direct employees, the states and cities are going rapidly forward and the Supreme Court of the United States, in October, 1903, in the case of *Atkins vs. the People*, sustained the right of a state to provide by statute for the working day of eight hours for employees of the state itself, and of counties and municipalities within its borders, whether the work be done directly, or indirectly through contractors.

When a majority of the states, acting under this decision, have adopted statutes providing for the working day of eight hours for employees working for the public indirectly through contractors, it is reasonable to suppose that Congress will enact the bill which for many years has been presented to it at every session, providing for similar protection for workmen in the employ of contractors working for the federal government.

The Right to Leisure of Wage-Earning Women and Children.—While striving to establish for themselves the right to daily leisure by trade agreements and by statutes, the wage-earning voters have never relaxed their efforts to establish the same right for women and children in the employ of private individuals and corporations. And in this

effort they have found it easier to use legislative methods, because the courts have been, on the whole, more inclined to permit the exercise of the police power of the legislatures than in the case of adult men.

Statutes restricting the hours of labor of women and children, while enacted in the interest of health and morality, have often been urged by persons animated by two other motives as well. In many cases, men who saw their own occupations threatened by unwelcome competitors, demanded restrictions upon the hours of work of those competitors for the purpose of rendering women less desirable as employees. In other cases, men who wished reduced hours of work for themselves, which the courts denied them, obtained the desired statutory reduction by the indirect method of restrictions upon the hours of labor of the women and children whose work interlocked with their own. But whatever the motive of the enactment, the real gain has always been leisure for all concerned; and the advantages to employers derivable from the work of women and children have regularly outweighed any inconvenience arising from the shortened working week.

Before 1889 the effort for the enactment of statutes regulating the hours of labor of women was confined to the trade unions, who had struggles of their own, to protect their own interests, and who can scarcely be blamed if they fought the battles for leisure for women and children first and most effectively in fields of industry where they them-

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selves reaped rewards from their occasional successes, *i. e.*, in occupations in which the work of women and children interlocked with their own.

The sum total of progress made is deplorably slight. While the hours of labor of children under the age of sixteen years are restricted to eight in one day and forty-eight in one week in Utah, Colorado, Montana, Illinois and Vermont; to nine in one day and fifty-four in one week in New York and Delaware and to ten in one day and fifty-five in one week in New Jersey; yet for girls between the ages of sixteen and twenty-four years whose numbers are increasing more rapidly than any other part of the working class, there are neither effective trade agreements nor laws prescribing anything more advanced than the working-day of ten hours and the working-week of fifty-eight or sixty hours. Moreover, the existing inadequate statutes tend to laxity of enforcement and to exceptions so important as to nullify the intent of the law in many cases.

Obviously most progress in establishing the right to leisure has been made by men who are both skilled workers and also voters (printers in the government offices, etc.), and the least progress by children ten years old in Georgia and Mississippi. We commonly assume that, under the processes of evolution, industrial conditions improve from decade to decade. But in the matter of a wholesome distribution of free time, it is clear that gains have been made, hitherto, according to the power of the working people to assert their right. How else

can we account for the fact that children of ten years of age still work eleven hours a day in the cotton mills of Georgia? The reason for their overwork is obviously to be sought in their powerlessness to organize for their own defense, in the weakness of the organizations of men in industries in which women and children compete, as they do in the textile trades; and in that apathy of public opinion which permits stockholders living in states in which relatively humane conditions have long prevailed, to derive incomes from corporations in states in which children and young girls are still exploited without restriction.

Leisure never comes to young girls and children employed in manufacture and commerce through efforts of their own, or upon the initiative of their employers, because under the demand for dividends and the pressure of competition, the better employer is constrained by the meaner or the industrially weaker. On a large scale this is illustrated by the alleged present inability of manufacturers in Massachusetts to shorten the working day and the working week in the textile trades, by reason of the pressure of their Southern competitors. For the younger workers, therefore, leisure is gained, with no help from themselves, either because their work interlocks with that of men working under trade agreements; or because statutes have been enacted for their benefit and the organization of men in their trade is powerful and intelligent enough to obtain effective enforcement of the laws; or because there is intervention on behalf of the young employees by

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philanthropic bodies, such as the Consumers' League and the various child-labor committees and working-women's societies, through which the public at large intervene in the interest of health and morality.

Taken altogether, the progress made on behalf of women and children, so slight, and so diverse in the different states, indicates how discouragingly far the right to leisure still is from any universal recognition, and how dependent upon militant action of the workers themselves.

It was not until after 1870 that Massachusetts, the Commonwealth which for thirty years stood in advance of all the states of the Republic in safeguarding the health, welfare and rights of wage-earning women and children, enacted a statute prohibiting the employment of women and children in manufacture longer than ten hours in one day and sixty hours in one week, and made provision for inspectors to enforce the law. In 1876 this statute was pronounced constitutional by the Supreme Court of Massachusetts in the case of the People *vs.* the Hamilton Manufacturing Company (120 Mass., 385, 1876), in which it was held that the legislature had full power to restrict by statute the hours of labor of adult women employed in factories, under the terms of Chapter II, Section iv, of the constitution of Massachusetts: "Full power and authority are hereby given to the said General Court, from time to time, to make, ordain and establish all manner of wholesome and reasonable laws, ordinances, statutes, directions, and instructions, either with or

without penalties; so as the same be not repugnant to this constitution, as they shall judge to be for the good and welfare of the Commonwealth, and for the governing thereof."

Many states have since followed the example of Massachusetts, but none has gone beyond it. Indeed, so far as is known to the writer, no other state has followed the important improvements incorporated in the Massachusetts statute since its establishment in 1876 by the decision of the Supreme Court. By subsequent amendments the hours of labor of women engaged in manufacture were reduced to fifty-eight in one week, and the same restriction extended, in 1900, to the hours of labor of women engaged in commerce, although an exemption covering the month of December temporarily weakened this extension compared with the protection afforded to women engaged in manufacture. In 1904, however, the exemption covering work in December was repealed, and women now stand on the same footing in regard to daily leisure, whether they are employed in manufacture or in commerce.

New York waited until 1886 before restricting by statute the hours of labor of women and children; and even then provided only for women under the age of twenty-one years, waiting until 1899, after the promulgation of the decision of the United States Supreme Court in the case of *Holden vs. Hardy*, February, 1898, before extending the restriction to women of all ages engaged in manufacture.

The imperfect and unequal recognition of the

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right to leisure is well illustrated by the present statutory provision of New York. There children under the age of sixteen years cannot legally be employed longer than nine hours in one day and fifty-four hours in one week. For children engaged in manufacture, the working day must end at nine o'clock at night, but children engaged in commerce may work until ten. Women of all ages are nominally prohibited from working longer in manufacture than ten hours in one day and sixty hours in one week, but this prohibition is rendered virtually nugatory by the words "except for the purpose of making a shorter working day on the last day of the week," in consequence of which the factory inspectors find the utmost difficulty in proving any given violation of the whole provision. Women employed in commerce enjoy, however, not even this defective statutory provision after reaching the age of twenty-one years. And for girls between the ages of sixteen and twenty-one years it is expressly permitted that they may work, without limitation of the length of the working day, from December 15 to January 1, *i. e.*, during the fortnight in all the year in which they are most in need of a definite prohibition of all work after six o'clock at night.

Here are four divisions of the protected workers, all having different provisions as to their degree of statutory leisure: Children under sixteen years of age in manufacture, and children of the same age in commerce; women under the age of twenty-one years in commerce, and women of all ages in manufacture. And each of the two latter classes is sub-

ject to exceptions in the statute which very seriously diminish its face value.

The Illinois Decision of 1895; (Ritchie vs. the People.)—In 1893 the legislature of Illinois enacted a statute restricting the work of women and girls engaged in manufacture to eight hours in one day and forty-eight hours in one week, and provided for the enforcement of the law by inspectors whose duty it was to prosecute all violations of the statute. But in May, 1895, this law was pronounced unconstitutional by the Supreme Court of Illinois, and since that date there has been no restriction whatever upon the hours of labor of women in that state. Because it is still in force in Illinois, depriving thousands of women and young girls of all statutory protection in the enjoyment of their right to daily leisure, this decision is still of importance, and is, therefore, printed in the appendix.

At the time of the rendering of the Illinois decision, the writer, as the responsible head of the state department of factory inspection, charged with the duty of enforcing the eight hours law, incorporated in the next following annual report of the department some comments upon the decision, which have remained buried in the obscurity of an official report. Time has, however, verified in so hope-inspiring a manner some of the statements there made that it seems worth while to reproduce them after the lapse of ten years:

“In annulling this section, the ground taken by the court, namely that regulation of the hours of labor is in excess of the powers of the legislature is

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of curious interest in contrast with the established policy of those states and nations in which this power to regulate is no longer in question, where the principle is accepted and acted upon that the care of the health of the factory employee is a legitimate subject of legislation.

"In France, Germany and every other continental country, including Russia, and in the more progressive states of this country, legislative regulation of the hours of labor has been found an effective measure for the protection of the health of women and children employed in factories and workshops. In England, the principle of the regulation of the hours of work for women and children has been established for more than two generations and the regeneration of the working-class in that country, from the degradation in which it was sunk in 1844, is generally attributed to the factory acts, and especially to this important feature of them.

"In contrast with the beneficent policy which has been followed during the past half-century in that greatest manufacturing country of the world, the Supreme Court of Illinois, in the year 1895, has rendered its decision upon grounds which were advanced and rejected in the English parliament in the fifties.

"The new feature introduced into the body of American legal precedent by this decision is the assumption that it is not exclusively a matter of the constitution of Illinois. The state constitution could be altered, so that thereafter the hours of labor could be regulated by legislative enactment, as

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in the older industrial communities. The court, however, makes the fourteenth amendment to the Constitution of the United States the basis of its decision. If this position were correct, all effort for legislative restriction of the working day would be wasted, since there is no prospect of change in the Constitution of the United States.

"Happily the weight of precedent is not on the side of the Illinois court; the precedents are in the other direction. In Massachusetts, for twenty years past, the principle has been established by the Supreme Court that the hours of labor of women and children may be regulated by statute. The Massachusetts precedent has had such weight that no case has been carried to the Court of Appeals in New York. The constitutionality of its ten hours law, though suits have been brought under it, has never been disputed.

"It remained for the Supreme Court of Illinois to discover that the amendment to the Constitution of the United States passed for the purpose of guaranteeing the negro from oppression, has become an insuperable obstacle to the protection of women and children. Nor is it reasonable to suppose that this unique interpretation of the fourteenth amendment will be permanently maintained, even in Illinois.

"To the working people of the state, the action of the Supreme Court is a calamity, for it must never be forgotten, in discussing the legislative restriction of the hours of labor, that this is not a question between the day of eight hours and the day of ten. In practise the question is between an unlimited work-

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ing day and a day restricted by statute to a reasonable number of hours. The court in this decision holds that *any* restriction of hours of labor of adults is beyond the power of the legislature.

"The immediate result of the decision has been the reestablishment of the unlimited working day for thousands of women and children in the factories and workshops of Illinois.

"When it is remembered that the annual increase in the number of women and girls employed in factories and workshops in this state is counted by thousands; that there are 1,181 little girls in the sweat-shops of Chicago; that inspectors of this department have found at work during the present year more than 30,000 women, of whom more than 7,000 were in sweat-shops, it is clear that the question of legislative restriction of the hours of their labor is not finally settled when the state Supreme Court has passed upon it in disregard of the body of American judicial precedents, in opposition to the experience of all civilized countries, and to the injury of the large and growing number of women and children engaged in manufacture within this state.

"The judicial mind has not kept pace with the strides of industrial development, and this decision shows that Illinois is, in law in 1895, what it was in fact when the state constitution was adopted in 1870—an agricultural state. What then can be done for the weakest and most defenseless bread-winners in the state?

"The outlook is far from hopeless. Even under

the decision as it stands, farther legislative protection *for minors* is not impossible. As to adults, the court has reversed decisions upon points of far less urgency than this.

"It may be that the court is as advanced as that portion of the community which is not yet thoroughly aware that Illinois is the third great manufacturing state of the Union. When, however, the observations made during a few more years shall have convinced the medical profession, the philanthropists, and the educators, as experience has already convinced the factory employees themselves, that it is a matter of life and death to the young people who form so large a proportion of their numbers, to have a working day of reasonable length guaranteed by law, it will be found possible to rescue the fourteenth amendment to the Constitution of the United States from the perverted interpretation upon which this decision rests. We may hope that *Ritchie vs. the People* will then be added to the reversed decisions."

Despite the suggestion of the court that the hours of labor of minors could be restricted by statute, the paralyzing effect of the whole decision was such that for eight years it was impossible to obtain even a restriction upon the work of *little boys at night* in glass-works. It was not until 1903, ten years after the passage of the first eight hours law, that a child-labor law was enacted prohibiting the employment of children under the age of sixteen years after seven o'clock at night, or longer than eight hours in one day. Thus from 1895 to 1903 girls fourteen

years of age could be legally employed throughout the night, or for any number of consecutive hours that might suit the convenience of their employers. And at the present time, both boys and girls over the age of sixteen years have no statutory right to any daily leisure in Illinois, but may be called upon to work twenty-four hours at a stretch if an employer should care to make such a demand. Instances have come to the knowledge of the writer in which corporations having branches in New York and Illinois obeyed the law of New York and employed no women or girls after nine o'clock at night in that state, while, under the Illinois decision, they required young girls to work all night in the Illinois factory. Indeed, young girls are regularly and constantly required to work at night in Chicago.

During the years since that belated and anti-social decision, Illinois has been the scene of a large number of strikes, in which the length of the working-day was either the only point or the principal point at issue. Had the working day of women and girls remained legally determined throughout the period, according to the enlightened intention of the legislature of 1893, it would have been eliminated as a cause of discord in all those cases in which only women and girls were involved and in all those other cases in which the hours of labor of men are determined by the length of the working day of the women and girls whose work interlocks with their own. The number and seriousness of the strikes since 1895, in Illinois, would in all probability have been thus materially diminished, together with the

lawlessness incident to them, since an ever present cause of discord would have been eliminated by the statutory recognition of a right.

Since 1876 the hours of labor of women engaged in manufacture have been determined by statute in Massachusetts, and strikes turning upon this point have been impossible. In Illinois, since 1895, the hours of labor of women and girls have been unlimited, by reason of the decision of the Supreme Court in the case of *Ritchie vs. the People*. Since the Supreme Court of Illinois interfered with, and rendered unavailing, the effort of the legislature of that state to eliminate a cause of discord by establishing a statutory right, it seems reasonable to attribute to the court the ultimate responsibility for the lawlessness of men and women who have striven to establish by extra-legal or illegal methods that right to leisure which the courts of Massachusetts and of the United States affirm, but the Supreme Court of Illinois denies.

The justice who wrote the Illinois decision is dead. A judicial election has been held and several of his reactionary colleagues have been replaced by men of more modern mind. But more important than these changes of personnel is the prospective effect of the decision of the Supreme Court of the United States in the case of *Holden vs. Hardy*, as will appear from the discussion of that case.

The Right to Leisure of Workingmen.—The most important judicial decision affecting the right to leisure is that of the Supreme Court of the United States in the case of *Holden vs. Hardy*, pro-

mulgated February 28, 1898, and commonly known as the Utah Eight Hours Case. This decision confirms the hope that the right to leisure may be established and extended by constitutional methods, legislatures and courts working harmoniously to promote the health and welfare of wage-earning people. By its reasonable and affirmative construction and definition of the intent and scope of the fourteenth amendment to the Constitution of the United States, this decision opened the way for a peaceful, though slow and laborious evolution of the beneficent powers of the individual states, and for reasonable and wholesome hours of work and of daily leisure. The fact that it immediately secured to the employees in certain industries in Utah the benefits of a statutory confirmation of their right to daily leisure, is not the vital point in this decision. Far more important to the nation and the future is the fact that it tended to rehabilitate the states in the performance of some of their most weighty functions, and reaffirmed principles which, formerly accepted as self-evident, had in recent years been not only disputed but abrogated by state supreme courts in a long series of decisions.

In all great industrial countries it has long been recognized that manufacture and commerce require equitable conditions; that legislative requirements of whatever kind, if imposed upon one, must be imposed upon all alike; that discrimination must be avoided, not alone because it is unjust, but because it is fatal. Hence legislation regulating the conditions of employment is usually embodied in meas-

ures of national scope, the execution alone being left to the local authorities, while broad fundamental provisions are uniform for one industry throughout an empire, a kingdom or republic. In America alone, the constitution leaves, in effect, to the states the regulation of the relation of employees to their work, and of the conditions of that work,—except as employees who come under the interstate commerce act receive the benefit of certain safeguards prescribed by that act.

When, therefore, state Supreme Courts take the position held by the Illinois court (*Ritchie vs. the People*), annulling the Illinois eight hours law, viz.: that, in consequence of the fourteenth amendment to the Constitution of the United States, the individual states are prohibited from interfering with the hours of labor, commerce and manufacture in the states affected by such decisions are, *pro tanto*, worse off than in other states and countries; for they are left without either state or national provision for that uniformity of relations which is one of their most vital interests. This construction of the fourteenth amendment, adopted and disastrously applied, in recent years, by the Supreme Courts of Illinois and several other states, has exercised a doubly injurious influence. It has minimized the power and efficiency of the states, and it has deprived employees of a protection which they could derive from no other source.

Incalculable importance attaches to this decision of the Supreme Court of the United States, because it reproves and, in the end, must effectively check

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that blighting tendency of the state Supreme Courts.

But for the unwholesome decisions of state courts arbitrarily placing limitations upon the powers of the states and reducing to lawlessness, for want of any legislative body recognized by the state courts as competent to deal with them, the relations of employees to their work, much of the decision under discussion might seem to be mere truism. Under existing conditions, however, it offers the curious and instructive spectacle of the Supreme Court of the United States assigning to the states duties and powers which the Supreme Courts of those states had previously declared not to be theirs.

In 1895 the Supreme Court of Illinois decided that the state cannot restrict by legislation the hours of labor of any adult. About the same time the legislature of Colorado inquired of the Supreme Court of Colorado whether a proposed statute limiting to eight hours the working day of laborers and mechanics would be constitutional; or whether it could be rendered constitutional by an amendment providing that it should apply only to mines and factories. The Supreme Court of Colorado replied that both proposals "would be unconstitutional, because they violate the right of both parties to make their own contracts—a right guaranteed by the fourteenth amendment to the Constitution of the United States." In 1894 the Supreme Court of Nebraska had decided that "an act of the legislature of that state providing that eight hours should constitute a legal day's work for all classes of mechanics, servants, and laborers throughout the state,

excepting those engaged in farming and domestic labor, and making violation of its provisions a misdemeanor, was unconstitutional, and, therefore, void both as special legislation and as attempting to prevent persons legally competent to enter into contracts, from making their own contracts."

Undeterred by these three recent and discouraging decisions of western courts, the people of Utah fell back upon the precedent of Massachusetts (*People vs. Hamilton Manufacturing Company*, 1876), affirming that the legislature of Massachusetts had power to restrict by statute the hours of labor of adult women employed in factories. The Illinois court, in its decision annulling the Illinois eight hours law, had taken occasion to refer to the Massachusetts decision, stating that, "it is not in line with the current of authority," and explaining that it could be arrived at only by reason of the "large discretion vested in the legislative branch of the government" by the constitution of the state.

From the days of the sweeping provision of the constitution of Massachusetts which took effect October, 1780, and has remained in force to the present day, the tendency has been to reduce the powers of the legislatures, both by restrictions inserted in the state constitutions and by the interpretation placed upon those constitutions by the state courts. Strongest of all had been the use of the fourteenth amendment by the state courts. This tendency to reduce legislative power in the states to zero, degrading the state government to a mere mechanism for laying and collecting taxes for the maintenance of the

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judiciary, the militia and the state charities, reached its culmination in the Illinois decision referred to. How far the pendulum has swung back towards the position of Massachusetts in 1780 is shown by the action of the people of Utah, by the decision of their Supreme Court, and by the decision of the Supreme Court of the United States sustaining that state court.

The people of Utah, instructed by the Supreme Court of Illinois in 1895, showed by their action in 1896 that they had learned the lesson. For, not content with such sweeping generalities as those of the Massachusetts constitution, they incorporated into their new constitution of 1896 an article dealing explicitly with the rights of working people, as follows:

"Section 1. The rights of labor shall have just protection through laws calculated to promote the industrial welfare of the state.

"Sec. 2. The legislature shall provide by law for a board of labor, conciliation and arbitration, which shall fairly represent the interests of both capital and labor. The board shall perform duties and receive compensation as prescribed by law.

"Sec. 3. The legislature shall prohibit:

"(1) The employment of women, or of children under the age of fourteen years, in underground mines.

"(2) The contracting of convict labor.

"(3) The labor of convicts outside prison grounds, except on public works under the direct control of the state.

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"(4) The political and commercial control of employees.

"Sec. 4. The exchange of blacklists by railroad companies, or other corporations, associations, or persons is prohibited.

"Sec. 5. The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

"Sec. 6. Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the state, county or municipal governments; and the legislature shall pass laws to provide for the health and safety of employees in factories, smelters, and mines.

"Sec. 7. The legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article."

In accordance with the provisions of section 7 of this article, the Utah legislature proceeded to enact a statute, of which the essential features are as follows:

"Section 1. The period of employment of workmen in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

"Sec. 2. The period of employment of workmen in smelters and all other institutions for the reduction or refining of ores or metals shall be eight hours per day, except in cases of emergency where life or property is in imminent danger."

On June 26, 1896, one Holden was arrested under

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a warrant charging him with employing a man to work in a mine ten hours in one day. The court, having heard the evidence in the case, imposed a fine of \$50 and costs, and ordered the defendant to be imprisoned in the county jail for a term of fifty-seven days, or until the fine and costs were paid. The case was immediately appealed, under habeas corpus proceedings, to the Supreme Court of Utah, and the law was sustained. The case was then carried to the Supreme Court of the United States, which handed down its decision on February 28, 1898, Justices Peckham and Brewer dissenting. The statute was again sustained. The position of the Supreme Court of the United States was defined as to the constitutionality of statutory restrictions upon the hours of labor of adults; and as to the powers and duties of the states with regard to the health and welfare of employees. The decisions of the courts of Illinois, Nebraska and Colorado were quoted with disapproval. But the great service rendered by this decision was its destruction of the boggy-man with which state supreme courts had for years been terrifying themselves, and each other, and timorous legislatures, under the name of the fourteenth amendment to the Constitution of the United States. Once for all, it is convincingly laid down by this decision that statutes restricting the hours of labor of employees in occupations injurious to the health will not be held unconstitutional by the Supreme Court of the United States on the ground that they are in conflict with the fourteenth amendment to the Constitution of the United States.

The decision is so coherent, so closely knit, that injustice is done by quoting isolated parts of it by way of illustrating the position taken by the court. Yet certain portions of the decision are of such vital import that they are here reproduced. Says the court: "The Constitution of the United States, which is necessarily and to a large extent inflexible, and exceedingly difficult of amendment, should not be so construed as to deprive the states of the power to so amend their laws as to make them conform to the wishes of the citizens, as they may deem best for the public welfare, without bringing them into conflict with the supreme law of the land." And again the court says: "This court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that, in some of the states, methods of procedure which, at the time the constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interest, while, upon the other hand, certain classes of persons (particularly those engaged in dangerous or unhealthful employments) have been found to be in need of additional protection." "While this court has held that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances, and a large discretion

'is necessarily vested in the legislature, to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests.' " Finally, the court quotes with approval the most advanced position taken by the Supreme Court of Utah, as follows: "Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety, or comfort of the people, or to secure good order, or promote the general welfare, we must resolve them in favor of the right of that department of government."

Having thus come to the rescue of the state legislatures and their powers in general, the court deals with their duties in regard to the health of employees. It sets up the general proposition that, "It is as much for the interest of the state that the public health should be preserved as that life should be made secure." "In [some] states laws have been enacted limiting the hours during which women and children shall be employed in factories; and while their constitutionality, at least as applied to women, has been doubted in some of the states, they have been generally upheld. Thus, in the case of the Hamilton Manufacturing Company (120 Mass., 283), it was held that a statute prohibiting the employment of all persons under the age of eighteen, and of all women laboring in any manufacturing establishment more than sixty hours per week, violates no contract of the Commonwealth implied in the granting of a charter to a manufacturing com-

pany, nor any right reserved under the constitution to any individual citizen, and may be maintained as a health or police regulation."

It is refreshing to find the enlightened Massachusetts decision thus authoritatively brought back into the "current of authority" from which it was, as has been seen, thrust forth by the Illinois court in *Ritchie vs. the People*. The Supreme Court of the United States settles also the vital question: "Who shall decide which occupations are sufficiently injurious to justify the restriction of the hours of daily labor of persons employed in them?" On no points have state courts been more arrogant, the Illinois court taking perhaps the most extreme position of all in the following passage of its decision: "It [the eight hours section of the state factory law] does not inhibit their [women's] employment in factories or workshops. On the contrary, it recognizes such places as proper for them to work in by permitting their labor therein during eight hours of each day. The question here is not whether a particular employment is a proper one for the use of female labor, but the question is whether, in an employment which is conceded to be lawful in itself, and suitable for woman to engage in, she shall be deprived of the right to determine for herself how many hours she can and may work during each day. There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel—for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and be-

yond which, if she work, injury will necessarily follow."

The court was naturally not in a position to investigate the conditions of work in the factories and workshops of Illinois. That is not its function. But the legislature of 1893, which enacted the statute then under consideration by the court, had been in a position to investigate the conditions of manufacture throughout the state; it had appointed a joint committee of the house and senate to investigate the factories and workshops in operation; this committee had visited a great number of establishments, and had taken a large amount of testimony from employers, employees, physicians, visiting nurses, inspectors and other witnesses, and had decided that, in view of the intensity of work and the speed required in virtually all occupations, eight hours did constitute a limit of hours of labor beyond which women could not work without injury. All this no court can do; it has no apparatus for such investigations; but this circumstance did not prevent the Illinois court from usurping the right which the later decision of the Supreme Court of the United States happily reassigns to the legislature.

Touching the powers of the legislatures in the matter of health and the hours of labor, the Supreme Court of the United States says: "These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employees; and, so long as there are reasonable grounds for believing that this is so, its decision

upon this subject cannot be reviewed by the federal courts."

And elsewhere the Supreme Court of the United States quotes with approval the words of the Utah court: "It may be said that labor in such conditions must be performed. Granting that, the period of labor each day should be of reasonable length. Twelve hours per day would be less injurious than fourteen, ten than twelve, and eight than ten. The legislature has named eight. Such a period was deemed reasonable."

The Illinois court had said: "The police power of the state can only be permitted to limit or abridge such a fundamental right as the right to make contracts when the exercise of such power is necessary to promote the health, comfort, welfare, or safety of society or the public; and *it is questionable whether it can be exercised to prevent injury to the individual engaged in a particular calling.*"

In beneficent contrast with this sinister dictum, is the following from the United States Supreme Court: "The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In

other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority." "The fact that both parties are of full age and competent to contract, does not necessarily deprive the state of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract should be protected against himself. The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the state must suffer."

This decision was not, of course, retroactive. It did not revive the Illinois statute restricting to eight hours in one day the work of female employees engaged in manufacture, enacted in 1893 and pronounced unconstitutional by the state Supreme Court in 1895. It did, however, by citing with disapproval virtually every proposition laid down by the Illinois court in that decision, give satisfactory assurance that the next eight hours law enacted in Illinois, if restricted in its terms to occupations dangerous to the health of the employees, must stand as good law, and cannot be pronounced in conflict with the Constitution of the United States.

The decision of the Supreme Court of the United States in the case of *Holden vs. Hardy* renders it unnecessary that, in future, statutes restricting the hours of labor should be confined in their applica-

tion to women and minors, if they have to do with occupations injurious to the human organism. The miners of Illinois and Pennsylvania might well strive for statutory confirmation of the eight hours day which they now enjoy only under terminable agreements based on arbitration. And women in the cotton mills have only to show that the ever increasing numbers of spindles and shuttles, and the ever increasing rate of speed required of them by the improvement of machinery, are wearing out their working energy, in order to be entitled to legislative restriction upon their working hours under the reasoning of this admirable decision. To women driving foot-power machines under the sweating-system, and to the employees in countless other occupations, the same reasoning applies. For the purpose of ascertaining which occupations are injurious, there might well be comprehensive investigations by boards of health and bureaus of labor.

The fact that the hours of labor of adult men can be restricted by statute only in occupations proven injurious to the health, is emphasized anew by the decision of the Supreme Court of the United States in the case of *Lochner vs. New York*,¹ where the court said: "The law must be upheld, if at all, as a law pertaining to the health of the individual baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of

¹ *Supreme Court Reporter*, Vol. 25, p. 539 *et seq.*

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the hours of labor does not come within the police powers on that ground. . . . The mere assertion that the subject relates, though but in a remote degree, to the public health, does not necessarily render the enactment valid. . . . We think that there can be no fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employee. In looking through statistics regarding all trades and occupations, it may be true that the trade of a baker does not appear to be as healthy as some other trades, but it is also vastly more healthy than still others. To the common understanding, the trade of a baker has never been regarded as an unhealthy one."

In New York, an extension of the statutory right to leisure followed directly upon the decision of the United States Supreme Court in the case of *Holden vs. Hardy*. As has been shown elsewhere, the hours of work of women over the age of twenty-one years, engaged in commerce and manufacture, were unrestricted in that state until 1899, when the legislature, encouraged by this decision, restricted to ten hours in one day and sixty hours in one week, the labor of women engaged in manufacture.

The Supreme Courts of Nebraska¹ and Washington² have sustained statutes modeled on those of

¹ *Wenham vs. the State*, 91 Northwestern Reporter, 421. Statute enacted Mar. 31, 1899.

² *State vs. Buchanan*, 70 Pacific Reporter, 52. Statute enacted 1901.

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Massachusetts for the protection of women in their right to leisure, the court of Washington citing the decision of Massachusetts and the Supreme Court of the United States in support of its opinion, and observing that the Illinois decision is the only one by which an act of this kind has been declared unconstitutional by a court of last resort.

In Missouri,¹ the provisions of the Utah law restricting to eight hours the work of miners, adopted by the legislature and sustained by the Supreme Court of Missouri, are now in force.

It has been related that the legislature of Colorado inquired of the Supreme Court of that state whether the provisions of the Utah law would be constitutional if enacted in Colorado, and was assured that they would not be constitutional. In spite of this assurance, such provisions were enacted by the legislature in 1899. In July of the same year a case arising under the statute was carried to the state Supreme Court and the law was pronounced unconstitutional.² The people of Colorado then followed the example of the people of Utah and amended the state constitution by the adoption of a section authorizing the legislature to enact a provision similar to that which had been pronounced constitutional by the Supreme Court in the case of *Holden vs. Hardy*. This the legislature of Colorado has hitherto failed to do.

The history of Colorado repeats in a spectacular

¹ *State vs. Cantwell et al.*, 78 Southwestern Reporter, 569. Statute enacted March 23, 1901.

² *In re Morgan*, 58 Pacific Reporter, 1071, July, 1899.

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manner the experience of Illinois. Statutory recognition of the right to leisure being denied, working people have striven to attain by strikes what they had failed to obtain by statute. The lawlessness which has disgraced Colorado, like the lawlessness which has long disgraced Illinois, is traceable ultimately to the denial of law by the authorities which alone can constitute and establish it. In Illinois the Supreme Court denied a right; in Colorado, the legislature. In both states the harm done is irreparable. Lives have been sacrificed; violence has taken the place of civic order; the public conscience has been outraged. But the Supreme Court of the United States has indicated the right path; the way is open; the remedy is at hand. Other officials can be elected; the will of the people can be enforced.

The effort of the wage-earners is to establish the right to leisure; to transmute the unemployed time of the dull season, with its attendant demoralization and suffering, into regular daily leisure, with salutary opportunity for rest, recreation, education, family life and self-help by means of savings societies and all those agencies administered by working people themselves which depend for their success upon the regular attention of persons free from over-fatigue and irregular pressure.

It is conceded that the right to leisure may be established by statute for children and minors in all states and in all industries; for women in some states in all industries; for both men and women in industries dangerous to the health; and, finally, for

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employees of the federal, state and municipal governments. It is, however, one thing to have these points established in principle by the courts, and an entirely different thing to achieve in practise the establishment of leisure throughout the industrial life of the country, in accordance with that principle.

Were statutes establishing the right to leisure already enacted and in force in accordance with the principles clearly laid down by the Supreme Court of the United States, the multitude of men, women and children affected by them would be so great, the ramifications of industry embraced would be so far reaching, that relatively little would be left to the trade agreement with its precarious renewal and threat of strikes to secure enforcement.

The immediate, practical lessons derivable from this weighty decision, for all those who believe that the right to leisure should be established by constitutional methods, appear to be briefly as follows:

1. Legislation restricting the hours of labor of employees in occupations obviously injurious to the health will not be annulled by the Supreme Court of the United States on the ground of conflict with the fourteenth amendment to the Constitution of the United States.

2. The short working day may be established by statute in the various states for all those occupations which are in themselves obviously injurious to the health of employees, *and it rests with the state legislatures to decide which are such occupations.*

3. Legislation limiting the hours of labor of em-

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ployees need not be restricted to women and minors, as had been the usage previously to 1898.

4. It is desirable to provide for such legislation by inserting in state constitutions, wherever there is not already such an enabling article, a provision similar to the general article of the Massachusetts constitution, or to the special article providing for the rights of labor which forms the distinguishing characteristic of the new constitution of Utah.

It is always to be remembered that these things do not occur spontaneously; they are the fruits of long and patient endeavor. Adverse decisions in states have cumbered the earth with error, discouragement, apathy, if not actual antagonism to this sane and hopeful, though slow and difficult, method of ethical gain through legislation.

The decision of the Supreme Court of the United States in the case of *Holden vs. Hardy* did but open the way, by sustaining a statute affecting a few hundred men in a state not highly developed industrially and by affording a precedent national in its scope, whereby may be done over again successfully work which, in several states, had once been done in vain. Yet it assures ultimate success to the long striving for the statutory enactment of the right to leisure.

State constitutional conventions must be held; state constitutions modified; legislatures induced to act when authorized to do so; state Supreme Courts brought to follow the precedent set by the Supreme Court of the United States. Years must be consumed in the work of education and legislation be-

fore the full fruits of this enlightened judicial interpretation can be reaped and enjoyed by working people throughout the Republic. Yet the ethical gain accruing at every step of the long process is amply worth the exertion which it costs.

Trade Agreements and Statutes.—It is possible that at present a larger number of people enjoy some degree of settled daily leisure by means of trade agreements specifying nine or eight hours as their day's work than by reason of statutory provisions. Yet this is, from the point of view of the welfare of the community, the less desirable method of securing leisure, for several reasons. Leisure obtained in this way rests upon no acknowledged legal right; it is gained by struggle and rests upon the power of the organizations on both sides to maintain the terms of an agreement, enforcing them by strike or lockout; it is never final, but always subject to cessation at the termination of the agreement; its existence for however long a time establishes no legal right; at best it creates only a valuable usage. Finally, this method of establishing some degree of settled daily leisure is open only to employees in those occupations in which the strongest type of trade organization develops; *i. e.*, in which strength and skill are both required, and women, children, and unskilled or feeble men are kept out of the labor market by the conditions of the trade itself. Such occupations are those of the locomotive engineer, the typographer (printing involves not only skill in setting type but strength to lift forms), the pilots of the ocean harbors and the

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great lakes, certain branches of mining and ore reduction, and the building trades, with some branches of manufacture. The nature of the work selects men of certain qualifications, bodily, mental and industrial, in all these cases; and such men are, in the nature of the case, better able to make favorable terms for themselves than can be made by the ten year old children of the Georgia cotton mills, or the victims of the sweating-system in New York City.

For children and young girls, leisure assured by means of trade agreements of their own is unthinkable. Such workers can derive it by this method only indirectly and under exceptional circumstances, as when a trivial minority of them are engaged at work which interlocks with the work of men employed in a trade bound by such an agreement.

The maintenance of leisure by means of a trade agreement limiting the number of hours in a day's work, presupposes the permanent maintenance of militant trade organizations of selected workers ready to meet on their own terms any organization of employers. Indeed, for many years the men in such occupations as have been indicated willingly relied upon the strength of their organizations for obtaining leisure, as well as wages and conditions satisfactory to themselves.

With all their well-recognized disadvantages as a method of obtaining leisure, trade agreements remain indispensably necessary throughout a wide range of industry, because, as appears from the foregoing examination of the leading cases on the subject, statutory provision for daily leisure for

adult male workers in the employ of corporations and private employers is limited, in the opinion of the Supreme Court of the United States, to those industries which are, or may be, injurious to the health. In the case of non-injurious occupations leisure for men will have to be obtained and maintained through trade agreements.

The right to leisure, deeply felt by working people to be a human right which they are determined to assert, has been the subject of ceaseless struggle and will continue so to be until its assured possession by all the people takes it out of the realm of contention. When, therefore, the Supreme Court of the United States limits the power of the states to restrict the hours of work of adult citizens, to occupations injurious to the health, it thereby relegates to the trade organizations and their trade agreements the task of maintaining, as a human right, by militant exertions, that leisure which it fails to assure to a very large class of voters.

Strikes on the largest scale, in which the establishment of leisure constitutes an important element of contention, are to be expected as an integral part of industrial life so long as the Supreme Court of the United States maintains the position that the freedom of contract cannot be interfered with for the purpose of establishing by statutory provision daily leisure for adult employees in non-injurious occupations conducted by corporations and private employers. This is the inevitable result of devolving upon trade agreements, in the case of adult male employees not engaged under contract by any gov-

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ernment and not engaged in an injurious employment, the function performed by statutory provisions in the case of other large classes of working-people. In the occupations thus outlawed, the result of the outlawry is the recourse to extra-legal means of asserting the human right which has not yet become a statutory right.

The improvement of machinery is incessant; the output increases; every occupation becomes more productive. -On the other hand, the pressure of competition weighs upon employers; dividends must be derived, irrespective of the strain upon employees. Workingmen elect to receive a part of their share of the increased productivity of their labor in the form of a reduced working day, as added daily leisure; and, since the court tells them that this cannot be done by legislation, they have recourse to the one alternative, the trade agreement, enforced by strikes.

The right to leisure is a human right in process of recognition as a statutory right. Wherever it is established, the objects of struggle between employers and employees are in so far reduced. Where, on the other hand, courts have held that the right cannot be recognized and established by statute, a ground of incessant contention is set up. In such communities, peace may be enjoyed by the public when, in a given trade, the inequality between the parties is such as renders a demand for regular leisure utterly hopeless, as in the sweated-trades or trades in which children and women are present in large numbers, *c. g.*, the Southern cotton

mills. Or peace may temporarily exist when both parties are so equally powerful that both fear warfare, and both profit by truce. This peace, however, is always in danger of coming to an abrupt end by the introduction of some new machine, or by the immigration of some new and especially adaptable body of laborers.

Critics of the effort to establish by statute the right to leisure may contend that the process is an intolerably slow one, that a statute, also, is liable to termination by repeal, is as little stable and permanent as a trade agreement and may prove excessively difficult to enforce. Such critics can easily make out a strong case for their contention. It is true that, after the constitution of a state authorizes the legislature to act, the legislature may fail to do so, as has been shown by recent events in Colorado. Or, a legislature may enact measures which are illusory for want of penalties, or by reason of exceptions such as that which weakens the restriction upon the hours of labor of women in New York. Or there may be no provision for the appointment of factory inspectors, as in the case of the recent child-labor law of Alabama, which provides that children under the age of thirteen years shall not be employed at night in cotton mills, but makes no provision for officials to enforce the prohibition, and in the case of the mercantile employees law of New York City, where the Retail Dealers' Association succeeded in 1898, and each subsequent year, in having stricken from the municipal budget all appropriation for the salaries of mercantile inspectors.

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Or, effective officers may be removed and incompetents appointed in their places, as has happened in many states.

Moreover, vigilance is needed even where workable statutes are enforced by faithful officers, lest valuable measures be repealed after being in force so long as to seem beyond all danger of attack. A case in point is the repeal of the so-called "Fifty-Five Hours Law" in New Jersey, which had remained unaltered upon the statute books from 1892 to 1903. This statute provided that women and minors under the age of eighteen years should not be employed in manufacture longer than ten hours in one day and fifty-five hours in one week, or after six o'clock in the evening of the first five days of the week and noon on Saturday. Although this law had never been passed upon by the court of last resort in the state, or enforced with vigor by the factory inspectors, it had nevertheless been the means of assuring unusual leisure to women employed in industries in which men maintained powerful organizations and insisted upon compliance with the letter of the law, thus facilitating their own success in demanding the same leisure. The statute was so well regarded by a large number of employers, and a larger number of employees, that its repeal, in 1903, came as a distinct surprise.

Statutes restricting the hours of work of railway employees, in the interest of the safety of passengers, have in some cases been so defiantly and persistently violated by companies (holders of charters and franchises) as to drive the employees

into striking in order to enforce the obedience of their employers to the terms of the law, when recourse to the courts seemed to the workers not certain to bring forth a decision sustaining the terms of the statute.

Yet, acknowledging the inevitable slowness of the process of statutory recognition of the right to leisure, and admitting all the difficulties and obstacles to be encountered in making progress and in maintaining it when made, it nevertheless remains true that it is more dignified for the working people and infinitely more wholesome for the community to be enlisted in behalf of the enactment and enforcement of the law, than engaged in striving to establish and maintain a right without recourse to the law.

CHAPTER V

THE RIGHT OF WOMEN TO THE BALLOT

It is now generally accepted that that legislation has proved wholly beneficent which has, during the past half century, afforded to women and girls their present wide-spread opportunity for education. Indeed, we are so accustomed to it that we realize with difficulty the fact that such provision on so large a scale is new to human experience. As a result of this far-reaching movement there is present in the community an element of distinctive intelligence available for social and civic usefulness such as never before existed. That we are far from getting the full benefit of the virtue and intelligence stored up in the community; that the leisure and culture which have come to home-keeping women might be utilized on a far larger scale than we have yet attained; that an ethical gain has been made whenever the new intelligence of women has become available in the body politic; and, finally, that other important gains may reasonably be expected in proportion as its availability is extended by conferring the franchise upon women, it is the object of this chapter to indicate.

It has been urged by opponents of the enfranchisement of women, that there are other methods by which this intelligence may be utilized without

active participation in political life, and this is not denied. Indeed, men who are faithful in the performance of their duty as voting citizens carry on, in addition thereto, many lines of social and civic activity. They do not, however, appear to believe that they would be more valuable in the performance of these voluntarily assumed tasks if relieved of their political duties. It is not members of philanthropic and civic committees who absent themselves from the polls; on the contrary. Why, then, should not women follow both lines of activity and prove even more effective in their philanthropic and educational work, by reason of their added powers as voting citizens?

Does anyone believe that the efforts of the Public Education Association of New York would have been less effective during the past ten years, if they had been reënforced by the presence in the electorate of the mothers, the teachers, and the other interested women, including the members of the Association itself?

The fear lest the votes of ignorant women may outweigh those of the intelligent could be met by the imposition of an educational requirement such as is already in force in Massachusetts. The utterly unreasonable fear that the votes of the depraved may outnumber those of the righteous scarcely needs mention. The balance of virtue and depravity among women compares at least fairly with that of the present electorate.

Women's Opportunities on Public Boards and Commissions.—Naturally, the first tentative step in

the direction of securing for the community the benefit of the newly attained intelligence embodied in educated women, took the form of appointment of women upon public bodies having to do with women and children. In this connection, however, there must be noticed the curious phenomenon that some women, whose valuable services entitle them to a respectful hearing, have expressed the opinion that, in such positions, women may be of greater value by reason of their non-political position, which gives assurance of disinterestedness not thought attainable by voting citizens. It seems to indicate a not unnatural loss of the sense of proportion that these faithful servants of the community, deeply impressed with the great need for work such as they have been doing, should forget that their number is so insignificant as to weigh but lightly in comparison with the disadvantage arising from the loss out of the voting mass of the accumulated intelligence of the vast body of women, including all the teachers. Indeed, these alleged, exceptional cases of advantage arising from the non-political position of women serving in public capacities must be regarded as fully offset by those other cases in which able women, also serving on boards, have found themselves shelved by being placed on committees and sub-committees whose work was unimportant; and far more than offset by the exceedingly small number of women serving at all in such capacities compared with the great numbers who are qualified by nature and education for this work.

In general, the statement is true that in states in

which women do not vote, they are not appointed to salaried positions on public boards and commissions, unless it is expressly provided in the statute creating the public body that a certain proportion of the members *shall* be women. Where the word *may* is used, there is a strong tendency towards the gradual replacement of non-voting women by voting men. And in many cases this involves a distinct loss to the dependent persons in whose interests such public bodies exist. Nor is this disparity confined to salaried positions. It is also most unusual to find an equal number of men and women on unpaid boards and commissions, even when the duties required are such as women are preëminently fitted for, and where the number of available women of intelligence is very large, as in New York and Massachusetts.

The precarious nature of the opportunity for public service open to women, where they have not been admitted to the electorate, is well illustrated by an episode in the recent history of Illinois. During his term of office, 1893-1897, Governor Altgeld appointed fifteen women to state boards of education, health, charities, factory inspection and the management of penal and reformatory institutions, among them women of such well-known philanthropic activity as Miss Julia C. Lathrop, Mrs. Alzina Stevens, and Dr. Sarah Hackett Stevenson. All these appointees served the state faithfully and several with distinction. The succeeding governor, however, continued the appointment of only two of the fifteen, replacing the remainder with men, who were voters.

A more recent example of the same precarious opportunity for service is afforded by the experience of the women members of the London School Board. From 1870 to 1902, women both voted for the members of the board and were eligible for election to it, several women having served long and usefully. But in 1902, Parliament legislated the School Board out of existence and, in 1903, relegated its duties to the County Council, for election to which women are not eligible. In this case a twofold right,—that of voting for the members of the School Board and of serving upon it,—was legislated out of existence after having been exercised for more than thirty years. Parliament, which used its powers to this end, is, of course, wholly independent of women, since they possess only the municipal franchise and the right of voting for members of the School Board. Obviously those minor forms of the franchise, and the right of serving on boards for public purposes, are held by an insecure tenure until the full power, the Parliamentary franchise, confirms their possession.

Despite the unstable nature of their opportunities, however, women have begun to work out interesting and suggestive changes in certain branches of the local governments. Thus, in connection with the police department, which was formerly regarded as utterly alien to them, women now serve as police matrons and probation officers, regularly recognized as officers of the court. Women attendance agents connected with the schools prevent many children from needing the attention of the men officers, and

may be regarded as in a sense preventive or substitute police. Reformatories for women and girls, established and maintained out of the public funds, and conducted by women, are beneficent manifestations of the same tendency to utilize the fund of new intelligence for communal purposes. In the same line of modification of the courts and their personnel is the activity of women lawyers as counsel for Societies for the Legal Protection of Women and Children. This is perhaps the most gracious form of activity yet accessible to the growing number of women who have read law ; and the marked improvement in the attitude of the Bench towards women and minors in both civil and criminal cases of importance, observable during the past fifteen years, is believed by the writer to be directly due to the patient efforts of many such societies.

Women who serve as inspectors of immigrant women and children, both meeting incoming vessels at the Atlantic ports and awaiting the arrivals at Ellis Island, are filling posts of duty of the highest value both to the immigrants and to the society of which they may become a part ; as are the women acting as factory inspectors, sanitary inspectors and inspectors of tenements. The addition of nurses who have received hospital training to the federal army and to the public schools of the city of New York, is another form of enrichment of the resources of the community by reason of the newly acquired intelligence among women. Unfortunately, the small number and insecure tenure of office of these valuable servants of the public still deprive the

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community of a vast deal of useful service which cannot become available until the constituency attains its full complement of women voters as much interested in these human affairs as the present constituency is absorbed in manufacture, commerce and transportation.

Need of Women in Educational Work.—By nature, by training, and by the accepted usage of the national life, women are chiefly occupied with the care, nurture and education of the young. Moreover, for reasons economic as well as pedagogic, the teachers in the public schools are largely women. It was, therefore, in following the line of least resistance that women have, in many places, become eligible for appointment or election to the school-boards; or enfranchised sufficiently to vote for the members of the boards of education. It is the belief of the writer that the results of such enfranchisement are conspicuously beneficial; that a broad line divides the communities in which women perform the duties of voting citizens in all matters relating to the schools, from those in which they are prevented from exercising those functions. It is the commonly accepted division of labor throughout the Republic that men are occupied with business and professional duties, and women take care of the children. In the administration of the schools this division of labor expresses itself in the fact that the teaching staff, which comes into daily contact with the children and is intimately acquainted with their needs, is composed chiefly of women, but the business of the schools, the work of the board of education, is con-

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ducted either wholly by men or by boards on which men constitute the majority of members. The consequences of this division, in communities in which women do not vote, are conspicuous. Business principles (keeping down the tax-rate), modified by political interest (corrupt awards of contracts, the spoils system in the appointment of teachers, etc.), exercise an undue influence,—greater than the consideration of the interests of the children, which do not readily become known to the business-men who compose the boards of education.

A case in point is the experience of the children in the schools of the city of Chicago. It is stated by citizens of Chicago, long and intimately acquainted with the Board of Education, that the membership of the board has in recent years, been composed with reference to the industrial and sectarian interests of the city rather than with exclusive reference to the welfare of the children. The railroad and traction companies (eager to keep down taxation), the real-estate and building interests, (alert in the matter of buildings and sites), the book-trust (ardently opposed to the introduction of free text-books), the school furniture companies, and certain ecclesiastical interests (keen to secure the appointment of teachers each after its own faith), are all said to have been represented by men of excellent ability upon the Board of Education. But the children and the teachers appear to have been somewhat lost sight of in the general concentration of zeal for the interests of manufacture, commerce and sectarian religion.

While it is true that there have been, for a number

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of years, one or more women members of the Board of Education in Chicago, they constituted a mere vanishing minority of the whole number of members, not sustained by a constituency of voting mothers, teachers, and other interested women, but appointed by the mayor of the city, apparently as a concession to the demand that the Board of Education shall not be wholly devoid of women. Their influence has, therefore, been of the slightest and seriously disappointing to such friends of the children and the teachers as have hoped unduly much from the mere presence in the membership of the board of women, unsustained by the power of an interested voting constituency.

Some of the results of the preponderant interest of the Board of Education in subjects apart from the welfare of the children of the city of Chicago, are picturesquely shown by the experience of a young neighbor of the writer. This Italian girl entered the public schools in early childhood, attending irregularly after the fashion of Italian children and with the connivance of an incompetent truancy department. In the course of eight years devoted chiefly to the study of language, she acquired the least possible broken and ungrammatical English. Seeing on the wall of the settlement a picture of Washington, she said confidently, "I know him, first man!" Being asked his name she said with certainty in her tone: "I learn him in school. First in peace, first in war, first in hearts of countrymen! Eyetalian man." Being pressed for his name, this product of the schools said, "Garibaldi!"

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Such was the foundation of English, history, and intelligent devotion to the ideals of the American Republic with which this adopted citizen left school, and entered upon the serious business of education in a neighboring bakery belonging to the biscuit trust. There she learned at once that her continued employment depended upon her becoming one of the Lady Cracker Packers, whose ideals she found it easy to understand and appreciate. Within a year she learned to vote as to the amount of dues which she and her fellow workers should pay, and how these dues were to be expended, for what purposes and by what officers, in the election of whom she naturally participated. She attended meetings, at which the objects of the organization were explained, and was taught that her short working day depended upon the strength of the organization. To this organization she devoted the fervor of the Latin temperament, which had never been aroused by the daily perfunctory salute to Old Glory at the opening of the sessions of that school which had left her to believe that George Washington's name was Garibaldi. At the age of sixteen years this girl was thoroughly accustomed to exercising in the union of her trade all those functions which at twenty-one she will still be unqualified for in the larger life of the commonwealth. The union looms correspondingly large in her consciousness.

The state of Illinois, through the decision of the supreme court, tells this girl that it is powerless to restrict the hours of daily work which the biscuit trust requires of her; but the union confidently un-

dertakes the task by means of organization and its label, with the possibility of a strike in the background. When the state tells her through another decision of the court that it is powerless to constrain the biscuit trust or any other employer to pay her wage weekly in money of the United States, the union performs this function effectively by the same means,—organization, the use of the label and the possibility of strikes.

When the lads with whom she works reach the age of twenty-one years, their interests are broadened and their allegiance to the union divided by the demands of the political parties upon their attention. Even on the most sordid plane of their immediate self-interest, the city council and the state legislature claim their thoughts. But the girl on reaching twenty-one years will have escaped from all farther educational influences; will have been long married and actively engaged in bringing up in the most unreasonable manner the large family which continues to the second generation in the Italian colonies. She will feed her infants bananas, bologna, beer and coffee; and many of these potential native citizens will perish during their first year, poisoned by the hopeless ignorance of their school-bred mother. She, however, will always remain a faithful ally of the union as the only institution which has ever invited her intelligent participation.

However convinced one may be of the value of the trade union in the community, it is hardly reassuring that, in the presence of the vast machinery of public education, the union should be, in practise,

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the chief educational agency vitally affecting the children and young girls in the immigrant colonies of the great manufacturing centers.

This girl is only one of thousands who are carried on the rolls of the public schools for years, but whose lives are so little touched by the work of the schools that, after two or three years in the factory, they have forgotten how to read unless, indeed, they are gathered into some union which carries forward their education in a one-sided manner, wholesome enough if balanced by other broadening and deepening experiences, but sadly inadequate as a substitute for the education supposedly afforded by the public schools to all the children.

Wherever a powerful business interest is involved, laws are readily enforced in its behalf and the administration of local government rises to meet its requirements. This has been strikingly illustrated in the efficiency of the fire department of Chicago throughout all the years of the uttermost political corruption of the city, when every other department reached the deepest depths of incompetence and inefficiency. The fire marshal of the underwriters arrives at the scene of every conflagration, large or small, as soon as the city's firemen, if not sooner;—and woe betide the man, or beast, or machine that falls below the highest achievement possible in every given case.

It is the contention of this chapter that women, all women, of a given community have the same interest in the children that the underwriters have in the conflagrations and the administration of the fire depart-

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ment. But, while the underwriters are voters, contributors to campaign funds, and representatives of the keenest interests of the business men, and have for all these reasons, very great local power to constrain the municipality to keep its fire department up to the highest point of efficiency, the women of Chicago have no corresponding power of making felt their interest in the schools. The community is, therefore, denied a reënforcement of moral power, and of educational interest, which it sorely needs to counterbalance the excessive pressure of business interest.

To the preponderance of the interests of business over the interests of the children, expressed in the majority of business men and the minority of women on boards of education, is due, doubtless, in other cities as well as in Chicago, the idiosyncrasy of the curriculum whereby the daughters of working-people are taught just those things which tend to make them valuable as stenographers, typewriters, cheap book-keepers, clerks, copyists,—if they stay in school throughout the years of compulsory attendance. If they drop out earlier, they have still acquired habits valuable for factory hands of low grade and miserable pay. They have been taught punctuality, obedience, working in crowds, listening to instructions. What more does a cheap factory hand need for beginning work? But of the qualities which fit girls for home-making and intelligent motherhood, what preparation for the development of these have our business men been able to imagine and introduce into the curriculum? True it is that, in rare cases,

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a woman serving upon a school board has carried weight enough, by reason of unusual personality, to override the adverse pressure of other influences and secure the introduction of some slight beginnings of domestic science into the schools. But this has occurred in those schools which needed it least, *i. e.*, in the upper grades, which are not reached by the children of day laborers. For the general introduction of domestic science into the lower grades, in which the children of the immigrants spend their sadly few school years, the lack of space and the cost of equipment on the necessary large scale have hitherto been effectively deterrent. It is here that Boston stands forth as a fine example of the effects of admitting to the electorate in the matter of the schools those who know most of the children's needs, the women of the community, including the mothers and the teachers.

In London, too, for more than a quarter of a century, the women elected to the School Board have assured to the girls in the board-schools at least instruction in cooking. As long ago as 1879 the writer enjoyed the privilege of visiting, with Miss Hill, a member of the board, one of the cooking-centers in a London board-school to which little girls came from neighboring schools; and the memory abides quite fresh after the lapse of so many years, of one little girl who, after cooking peas, carefully wrapped them in a copy of the London Times to carry them home to a family whose tastes evidently needed cultivation in the matter of vehicles for the transportation of soft, moist, warm vegetables.

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Due to the preponderance of the interests of business over the interests of the children in the composition of school boards including few or no women, is the almost universal absence of adequate school accommodations. It is not an accident, but a fact of the highest significance that the two important cities in the United States which afford school accommodations for all the children throughout the period of compulsory attendance at school are Boston, where women vote for the members of the Board of Education, and Denver, where women vote for all officials. Does anyone doubt that the enlightened policy of Boston and of Denver is due, in large measure, to the influence of the women teachers in the electorate? Granted that, in Boston, the Buildings and Grounds Commission is separate from the Board of Education, the interest in school questions engendered by the annual election of members of the Board of Education, and the general participation of women voters both in the election and in the annual lively campaign which precedes it, keep the tax-paying public apprised of the inner condition and life of the schools to an extent impossible by any other means and actually not approached in other cities.

By reason of the rapid growth of American cities, the provision of adequate seating facilities for the increasing number of children constitutes one of the most difficult problems with which boards of education have to deal. Families move from older portions of a city where school buildings are first erected, and it is not easy to foresee and provide for the sudden expansion of one suburb or another. Moreover,

there are influences at work uninterruptedly, bringing to bear silent pressure adverse to the expenditure of funds sufficient to provide seats and equipment for all the children. Taxpayers desire a low tax-rate, not perceiving that cheap primary schools involve in the long run costly reformatories, and jails, accompanying an untrained and unintelligent working class. Corporations desire an abundant supply of available children to work at trivial wages. Children for whom there is no school room begin to work earlier in New York City despite the excellent new statutes, than children in Denver or in Boston who are kept in school to the age nominally required in New York. In New York city, where the Board of Education is appointed by the Mayor, who in turn is elected by the suffrages of men only and who does not usually appoint even one woman to the central board, the deficit in school seating accommodations has not for many years been less than fifty thousand. Indeed, no administration ventures to take a school census, because no administration can afford to let the actual deficit be accurately ascertained and definitely located. It is politically safer to pooh! pooh! the estimates of the friends of the unfortunate excluded children and the children in half-day sessions, than to face the facts as they would be recorded by a school census.

The inability of boards composed wholly or chiefly of business men to deal adequately with the business of the board, *i. e.*, the education of the children of the city, is revealed on a vast scale in the case of the children who fail of promotion. The most overcrowded

classes are the lower ones, and these are congested largely by reason of the presence in them of children who have been in school long enough to have been moved on into higher and less crowded classes *if* they had been ready for promotion in due order. In London, where women have voted for the School Board and have served on it for thirty years, the scope and gravity of the problem of the children who fail of promotion have long been recognized, and comprehensive efforts to deal with it are persistently made. In New York, where the same problem has existed since the foundation of the public schools, it was not discovered, and then by a woman superintendent, until the year 1903, when the new law took effect which requires that children, before beginning work in manufacture and commerce, must be fourteen years of age and must also have accomplished as much of the work of the curriculum as a child of twelve years who had failed of no promotions. Several causes of the failure of children to move forward in due order are removable by the Board of Education, *e. g.*, the half-time classes arising from insufficient school accommodations; the excessive number of children carried on the roll of one teacher; the suspension of unruly boys who, until very recently, were not brought before a magistrate and committed to a school, but merely turned into the street to waste their school years in idle mischief or to go to work in violation of the child-labor law; the dismissal of children by visiting physicians (before the very recent appointment of nurses who now follow up the children and get them back into school

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with the least possible loss of time). Other causes of the failure of children to be promoted are municipal defects curable if the Board of Education made effective demand for cure. Among these is the insufficient provision for hospital care of infectious and contagious disease. Because scarlet fever and measles are left to be nursed in the tenements, healthy children of the family spend weeks and months in banishment from school and fail of promotion through no fault of their own.

Does anyone doubt that American cities which should follow the example of London and enlist women of discretion and leisure as school visitors would make short work of the clogging of the lowest grades by children who are wasting their own time, that of the teachers, and that of the children who properly belong in these grades? Could there be a more unbusinesslike procedure than this defeat of the purpose of the schools, for want of the personal contact of women with the children, in work supplementing that of the schoolroom tasks of the teachers? It is clearly due to the passive rôle assigned to all women except those professionally engaged in the schoolroom.

The consequences of this clogging of the lowest classes are many and evil. Among them is the truancy of children discouraged by failing of promotion, with the attendant probability of arrival in the juvenile court under the charge of playing ball in the street, or some similar anti-social offense, or of arrival at the legal age for beginning work without having accomplished the meager amount of school

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work required by the law, an experience which bears most heavily upon those families in which it is most liable to occur,—those of the very poor.

In this relation, the interests of the teachers and the children are strictly identical ; it is most desirable for the teachers that school accommodations should be abundant and wholesome ; that the children in one class should not exceed thirty ; that salaries for teachers should be such as to enlist in the profession able and well-trained persons. To enfranchise the teachers is to give to the children the best informed possible advocates in the electorate, and to strengthen every effort made on behalf of the unfortunate children who now fail of promotion year after year and finally defeat the object of the schools either by falling out without completing even the required minimum of work, or else cover each stage long after they have passed the age to which it is appropriate, and when it has lost all real value for them.

Protection of Children in Colorado.—Compared with the children of New York City the children of Denver appear to be singularly fortunate in the protection which they receive by means of legislation. A child in Denver is required to attend school regularly to the age of sixteen years, unless he is released from this duty by the joint action of the superintendent of schools and the county judge ; and in that case he must complete the work of the first eight years of the curriculum of the public schools. A boy released from school attendance is subject to the supervision of the two authorities mentioned, and can work only on condition that his record continues

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satisfactory to them, being kept on the roll of the juvenile court, not as an offender, but as a ward of the court. If he should be required or permitted by an employer to work longer than eight hours in a day, or at an occupation injurious to his health, it is within the power, and is clearly the duty of the superintendent and the judge to cancel his permit and return him to school or require a change of his occupation.

Where the great body of children in a city are kept in school until they reach the age of sixteen years, and all must finish the work of the first eight grades of the public schools, the rising generation goes into the bread-winning occupations with an unusually high level of efficiency of mind and body; and where all the wage-earning children under the age of sixteen years are virtually wards of the court, the exploitation or demoralization of children by means of their work becomes almost impossible.

In Colorado, children under the age of sixteen years enjoy, also, an unusual degree of protection by reason of that brief and comprehensive statute which renders any person who contributes to the delinquency of a child liable to a fine or imprisonment not exceeding one year. Under this recent statute, the dealer who sells a cigarette to a boy, the mother who sends a child to fetch beer, or who permits him to read dime novels so that he is led to run away, the telegraph operator who sends a boy to a disreputable house to deliver a telegram or message, the coal-train conductor who permits a child to "hop a train" or to pilfer coal,—one and all may be brought into

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court, placed under a suspended fine for the first offense, and sent to jail for a year if any continue to offend. In practise, more than a score of fathers were sent to jail during the first half of the year 1904, for contributing to the delinquency of their children. Hardship to their unoffending wives arising from loss of the earnings of the bread-winner was obviated by arranging to have the offender in jail only from Saturday noon to Monday morning, the remainder of the sentence being suspended.

It is the common experience that statutes of exceptional rigor for the protection of children are apt to remain dead letters, and this has been sadly true of child-labor laws, where powerful corporations have secured the removal of officials who were conscientious and efficient in enforcing such measures. How, then, is it to be accounted for that the county judge of Denver has for years enforced penalties upon saloon keepers, cigarette dealers (irrespective of their relation to the brewers, the whiskey trust and the cigar trust), telegraph operators (agents of two of the most powerful corporations, and the largest single employers of boys in the Republic); and has, nevertheless, not only not been retired from office but, on the contrary, was the only candidate upon whom every political party in Denver united at the last election? Citizens of Denver assert that this significant fact is due to the voting mothers, teachers and other interested women in Denver. It is a part of the recent history of the city that, when the corrupt political machine found Judge Lindsey unbending in his opposition, it dropped his name

from the proposed list of nominees for the next election. But when the women of Denver heard of this, they held meetings and made known their will in such effective manner that, when the day came, no other name appeared as candidate for the office of county judge upon the ballots of any of the seven political parties which complicate elections in that lively city.

Opponents of the extension of the franchise to women have pointed out that political corruption in Colorado still exists, despite the fact that women have for ten years been admitted to the electorate. But in so doing, they mistake the direction in which ethical gain is to be expected to result from the enfranchisement of women. Political corruption is not a matter of sex; it results from the unethical basis of our business activities, and cannot be abolished until that basis is altered and made ethically sound. The ethical gain which may reasonably be expected from admitting women to the electorate is the extended activity of those members of the community who are primarily interested in the nurture and safeguarding of the young.

A suggestive comparison is that between the cherishing and nurture afforded to the children of Colorado by means of legislation due to the voting constituency of women, and the unsheltered state of the children of Georgia, where women are in every way excluded from public life, and where boys and girls at any tender age are wholly without protection from the demands and the cruel neglect of cotton-mill owners, as is indicated in the decision of the Su-

preme Court of Georgia in the case of the Canton Cotton Mills.

Equally suggestive is the comparison of the defenseless position of girls in South Carolina, where women have no political power and the age of consent is ten years, with the careful safeguarding of girls in Colorado. It is not accidental that one of the first measures introduced into the legislature of Colorado after women were elected to that body, was the bill successfully carried by a woman senator, raising the age of consent to eighteen years, at that time higher than the corresponding law of any other state. Such a law affords protection to the boys and youths of the community which they are wholly unable to estimate. It saves them those temptations which beset youth in communities in which, as in North Carolina, the offense of tempting girls carries but a slight penalty, if any, with no certainty of enforcement against a white man. When the age of consent is raised to eighteen years, this is a protection not only to all the young girls and boys in the community, it is a protection to the community itself against the children of ruined girls. Denver needs no foundling asylum like that institution which confesses the disgrace of New York City. It is at the opposite pole from the legally sanctioned and medically supervised vice of the cities of Continental Europe, with the accompaniment of lock hospitals and foundling asylums. It now remains for Colorado to deal effectively with the quacks and their newspaper advertisements, and to substitute for their polluting influence wise instruction in phys-

iology, biology and morals, in the public schools.

Never before in human history has the right of the young to pure living, the claim of the adolescent to guidance and restraint, the need of the child for nurture at the hands of father, mother, school and the community been recognized as in Colorado to-day. Never have the good influences of good homes received such reënforcement by means of legislation.

These gains have not been made because the subject matter ever developed political issues. Elections have not hinged upon them. But the accent has been shifted; the emphasis is different. It appears that, on the whole, the interests of children and youths are unusually well guarded in a community whose affairs are all carried on by men and women together.

Advantages of the Recognition of the Right of Women to the Ballot.—The slight contribution of time, thought and effort required of all the voting citizens, if spent by all, not merely as at present by men, may reasonably be expected to prevent the need of much of the remedial and reformatory work now demanded of individuals for individuals. Infancy, old age and the misfortunes of congenital defectives, constitute a legitimate claim upon the leisure and charity of women, as of men. But the endless, cheerless task of attempting to repair by philanthropic methods the wreckage due to bad laws, which women have no part in making, and the lax enforcement of good laws, is a burden which should no more be inflicted upon women than the task of enforcing demands for industrial improvements in

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the lot of workingwomen arbitrarily disfranchised should be saddled upon workingmen.

Reference has been made to the value of the addition of the women teachers to the electorate. It remains to point out a distinct disadvantage arising from their continued disfranchisement. It is, for instance, an anomaly not likely to remain permanent that many able and successful teachers of civics and political and industrial history to boys and young men are women who are themselves not voters. The effect upon the minds of the pupils must be highly confusing. They seem forced to the inference that these subjects are of minor importance, since they can be taught by persons who are not permitted to perform the duties and functions which form the real content of the teaching. But what could be more unfortunate for the Republic than to inculcate in the minds of coming voters any idea calculated to minimize the importance of the subjects of civic duties and political and industrial history?

In an essay strongly adverse to the admission of women to the electorate, published in 1893 by Mr. Goldwin Smith, there occurs the following passage: "Woman's Suffrage is a change fraught with the most momentous results, not only to the commonwealth but to the household. Let Wyoming and New Zealand try it, say for ten years. The success of the Wyoming experiment is publicly proclaimed and the universe is exhorted to do likewise by Wyoming, whose voice is now that of the female voters. Private accounts are not so favorable, nor have the neighboring states, which must have the

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clearest view of the results, been induced to follow the example. To Wyoming for the present, Woman's Suffrage in the United States remains confined. The New Zealand experiment will be more satisfactory, though New Zealand, having no warlike neighbors, does not run the same risk of emasculating her government which is run by a European State. If at the end of ten years it appears from the two experiments that legislation and government have become wiser, more far-sighted, and more just, without detriment to the peace and order of the home, let the world follow the example, and be grateful to those by whom the first experiment was made."

It is worthy of note in this connection that, according to the latest census of the United States, Wyoming heads the list of all the states when they are graded according to the number of children between the ages of ten and fourteen years who are illiterate. Including the Indians, Wyoming is charged with but 72 such children. Inquiry has elicited the fact that this is due directly to the efforts of the women voters, who long since worked out a plan by which traveling teachers are sent to remote portions of the state, where scattered children are gathered from ranges and ranches until they can read, when the teacher proceeds to another post and the process is repeated with another gathering of children. In order that the children may not forget what they have learned, traveling libraries are sent in the wake of the teachers.

It is respectfully submitted that the period suggested by Professor Goldwin Smith has elapsed;

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that the three neighboring states, Colorado, Utah and Idaho have now all followed the example of Wyoming; that legislation has become wiser, more far-sighted and more just without detriment to the peace and order of the home. Moreover, the Australian Federation and South Australia have followed the example of New Zealand. What is to be gained by farther delay?

Within the family an interesting and ennobling modern relation due to the education of women is the mutual sympathy, respect and understanding between the college-going youth and his college-bred mother. The unconscious contempt, mitigated by affection, felt by Pendennis at Oxford for Helen at home in the country, is alien to the experience of sons whose preparation for college has been guided by the joint counsels of both parents. On a larger scale the same seriousness of respect of adult sons for their mothers may be noted even by casual travelers in states in which women vote on all subjects. Something of this greater unity of interest between mothers and their adult sons and daughters in the performance of a common duty of the highest importance, may reasonably be expected in humbler walks of life with the extension of the ballot to women in the great industrial states. At present, this form of common interest exists among the members of a family of working-people chiefly where the wife has, before marriage, been a wage-earner and member of a trade-union, and after marriage continues her interest as an active member of the Union Label League or the Women's Trade Union League. It would surely be

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more wholesome for the family and the Republic, to extend the common interest of mother and adult sons and daughters to the affairs of the whole commonwealth, than to leave it confined exclusively to the industrial affairs of life.

It is now more than twenty years since the writer printed in the *International Review* a paper on "The Law and the Child" in which it was pointed out that the two agencies which had chiefly modified the life of the children of the working class during the nineteenth century were the development of steam-driven machinery, which had made the labor of children available on a large scale in manufacture, and the emergence of women from the exclusively domestic life of former centuries to a participation, first in the education, and later in the philanthropic and educational work of modern times. During the intervening years since the publication of that paper the task of obtaining or promoting legislation on behalf of workingwomen, girls and children, or of securing its enforcement, has never ceased to be one of the deepest interest. The progress achieved, however, is so slight, the obstacles in the way of any real protection for young children are still so great, in all the industrial states, that it has become the settled conviction of the writer that, until women are universally admitted to the franchise, direct measures involve almost certain illusion and disappointment. This conviction is confirmed, not merely by the affirmative experience of Colorado, but by the negative experience connected with the effort to establish by statute the right to leisure of women and children in

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Illinois, where women vote only for the trustees of the state university. It is still farther confirmed by the overwhelming disparity between the advantages gained for themselves by workingmen who are voters, compared with the excessive difficulty involved in making any gain whatever, during the same period of twenty-years, on behalf of workingwomen and children.

For years the friends of the young clerks in retail stores have striven to obtain for them the poor privilege of being seated when at work, and with what success? In many states, laws have been enacted making diverse provisions for seats in stores. In New York City, for instance, the law has required, since 1896, that one seat be provided for every three clerks. In some stores the seats have been supplied for the third floor, because the clerks were chiefly employed upon the first. In many stores chairs are abundantly supplied in the fitting-rooms of the cloak, tailoring and dressmaking departments, for the use of customers, and are included in the general reckoning according to which there are, on the premises, chairs in the proportion of one to three clerks. In still other cases, chairs or seats are wholly absent from the notion counters and from the counters or tables in the aisles of the stores where half-grown girls serve as sales-clerks. The absence of the seats is suavely explained by the fact that the employees are there only temporarily. But their employment lasts day after day, and the pretext is utterly transparent. In still other places, seats are provided ostentatiously, but girls who use them are censured or

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dismissed. All these variations of the art of evading the statute have been found by the writer in reputable establishments in New York City.

It has been shown in another chapter that the power of the Retail Dealers' Association is such as to prevent the appointment of special mercantile inspectors as provided for by the mercantile employees' law. That classic example illumines the whole subject. On one side are wealth, the prestige of the large employers, and the effective control of the enforcement or non-enforcement of laws;—for the employers not only vote, but exercise power as large potential contributors to campaign funds. On the other side are youth, ignorance, inexperience, poverty, and that irresponsibility which arises from the hope of marriage and resultant escape from the inconveniences, great and small, which attend any given occupation. It may be said that the men who are clerks represent the interests of the women and girls and should be able to secure inspection of mercantile institutions and stores. But they are increasingly hampered by the pressure of competition of the very women and girls whom they are thus asked to protect. They have their hands more than full with their own difficulties, and cannot reasonably be asked by the community to fight the battles of their arbitrarily disfranchised female competitors. Nor do competing workingmen by any means always recognize an identity of interest with the women beside whom they work. It is only very recently that they have gone so far as to welcome them to the trade unions.

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The slow and ineffectual steps towards the establishment of an adequate force for mercantile inspection, in a state in which the principle of state inspection is so long established and clearly recognized as in New York, are obviously due to the absence of a voting constituency behind the demand for such inspection.

Because, in all great industrial states, women are disfranchised, except for certain strictly limited powers in connection with educational affairs, the industrial disadvantages of the minor wage-earners are aggravated by this powerlessness of the adult workingwomen to make the needs of the whole class felt, by those methods which are slowly and gradually but surely improving the position of workingmen; and are no less aggravated by the equal political impotence of those other women who are the natural friends and protectors of the young workers,—the women of wealth, leisure, intelligence, and philanthropic interest.

It has been made sufficiently clear in the foregoing chapters that the exertions of the Retail Clerks' Protective Association, the Working Women's Societies, the Consumers' League, and Church Association for Improving the Condition of Labor, and the League of Women Workers have availed little for changing industrial conditions affecting workingwomen and children compared with what voting workingmen have been able to do for themselves.

The burden of the tale of this book is the difficulty of enforcing legislation on behalf of children and minor workers. Their position is zero minus. The

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element which, under normal conditions, is primarily concerned with their interests consists of the adult wage-earning women, the mothers and the teachers, with philanthropic women of education and leisure. So long as these either shirk the duty of securing and using the opportunity to vote, or are debarred from doing so, the difficulty of enforcement of protective laws must continue.

The exceptional disadvantage attaching to the position of minor working girls is such as to call for humane exertion on the part of all who can in any way contribute to their welfare. And the response is found in the rapidly growing series of philanthropic undertakings of which working girls are the objects. While the Young Men's Christian Associations aim to enhance the efficiency of their beneficiaries, by furnishing instruction and facilities for systematic exercise, bathing and wholesome recreation, the corresponding organization dealing with minor working-girls provides, not only these aids to efficiency, but a variety of sustaining and curative measures in addition. What is the meaning of the homes for convalescent working-girls which are springing up in so many directions? Is it not that working-girls are being worn out and used up at a rate such that no savings of their own brief working period could possibly provide for their needs? And these homes are without exception overcrowded (or burdened with waiting-lists) largely by sufferers from nervous prostration or pelvic disorders induced by long hours of work and needless standing arbitrarily imposed in connection with their work.

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Boarding houses for working girls, furnishing board at four and five dollars a week and supplying a modicum of comforts paid for by philanthropic subscribers, exist in a score of states. Why all this provision for which nothing corresponding is asked on behalf of young men? Is it not due to the general feeling that the morals of working-girls must be buttressed, their wages eked out in the interest of society itself? Rescue homes and shelters tell their own chapter of the story of insufficient pay coupled with overwork and temptation; and this chapter is supplemented by the rapid growth of foundling asylums, and committees for finding places in friendly families for mothers with one infant each.

It may be many years before any of the efforts now made on behalf of working-girls can be safely relaxed. But why should all this effort be confined, in their case more than in that of young workingmen and boys, to the forms of philanthropy? Why should not effort on their behalf go forward on two feet, the philanthropic and the political together, as the movement of workingmen goes forward? Why should it limp haltingly along upon the one foot of philanthropy? Is it not quite possible that, with the extension of political power to all the women in the community, such improvement in the conditions of employment must result that the minor wage-earners will be more nearly self-supporting, less often placed in the humiliating position of working and yet being objects of charity? For any body of wage-earners to be disfranchised is to be placed at an intolerable disadvantage in all matters of legislation.

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It has been shown that in states in which women have been admitted to the electorate, certain substantial advantages have accrued to the schools and the children. It is entirely reasonable to infer that with a farther extension of the franchise to women, a similar gradual improvement in the lot of the minor wage-earners will come about, and that these improvements cannot be achieved so promptly or so lastingly in any other way.

While leisure has been increasing in the class of prosperous, home-keeping women, the need of their help, sympathy and protection has been growing among the young workers. Since the leisure of prosperous women is due largely to the labor of young wage-workers (who are engaged chiefly in the food and garment trades, the textile industries and that retail commerce which lives by the patronage of home-keeping women), it behooves the fortunate to assume their full share of the duty of making and enforcing laws for the protection of these young wage-workers. But this they can do only when they perform all the duties of citizenship, voting and serving on public boards and commissions when elected or appointed to them. It is because women are less under the stress of competitive business, because they do, in fact, represent children and youth, that their vote is needed.

One alleged form of philanthropic work in behalf of working girls would certainly go out of existence if women were added to the electorate, namely those so-called reformatory institutions under sectarian management in which for years at a stretch girls are

detained without trial, kept at work for the benefit of the institution or of the ecclesiastical organization under whose auspices it is conducted. Only the members of a disfranchised class can be subjected to treatment such as this.

Right of Women to a Share in the Enactment of Marriage and Divorce Laws.—A subject of the highest ethical importance is kept effectively under discussion by the unwearied efforts of the Divorce Reform League to obtain the enactment by Congress of a uniform law dealing with marriage and divorce throughout the Republic. No other law touches in the same manner the welfare of every man, woman and child in the nation, as the law governing marriage and divorce. No other law, therefore, so peremptorily requires the assent of every citizen. Men and women are alike affected by the legal basis of family life; and since the points of view from which the subject is approached by men and women are fundamentally different, that law alone can be an essentially just and righteous one which is so framed as to satisfy the needs of both men and women and to rest upon their agreement.

For a federal law, at the present time, there is no machinery by which the assent of women can be obtained. Such a law, therefore, if enacted while the present suffrage restrictions remain, must be the product of the will of far less than half of the adults whom it would affect. However wise the measure recommended might appear in the abstract to be, the manner of its adoption would constitute an intolerable injustice.

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It is sometimes urged by the advocates of the congressional measure that the method of securing the adoption of legislation by the action of the separate states is injuriously slow; that evils attending the present variety of legislation are such that haste is required. To this it may, however, be replied that the machinery of legislation in the states responds more quickly and sensitively to the will of the people than does the machinery of federal legislation. If, therefore, the people of the various states are slow to alter their laws governing marriage and divorce, this may arise from the fact that the existing laws are more or less adapted to the life of the people in the states. If they are not so adapted, the first preliminary change should logically be the extension of the electorate to include the non-voting elements of the population now silently affected by the laws. That being done, a just basis would have been formed upon which to proceed with farther changes in legislation in the individual states. If it be true that the evils arising from the existing chaos of legislation affecting marriage and divorce in the different states have become, or are becoming intolerable, surely it is fair to infer that these evils may be due to the enforced silence in matters of legislation of half the people affected by them.

The need of haste is a strange reason to assign for the transfer of the power to legislate upon the most intimate relation of human life, from those governments which are most easily controlled by the people affected, to that which is farthest removed from them.

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Four states are now in a position to deal with this or any other question on a basis of entire justice, namely those states in which men and women alike vote; many other states possess all the needed machinery for submitting important measures to the vote of the people; and it is perfectly easy to provide, in any given case, that women may vote on the question submitted. There is obviously more need for such submission in the case of a bill dealing with marriage and divorce than in the case of any other subject. Not until the responsibility for the change can be shared by the whole adult population should so grave a change be undertaken as the transfer of the power of legislation upon this most vital of all subjects from the states to the federal government.

CHAPTER VI

THE RIGHTS OF PURCHASERS

In any given community every person is directly or indirectly a purchaser. From birth to death choice is made for us or we ourselves choose objects of purchase daily, even hourly. As we do so, we help to decide, however unconsciously, how our fellow men shall spend their time in making what we buy. Few persons can give much in charity; giving a tithe is, perhaps, beyond the usual custom. But whatever our gifts may be, they are less decisive for the weal or woe of our fellow beings than are our habitual expenditures. For a man is largely what his work makes him—an artist, an artisan, a handicraftsman, a drudge, a sweater's victim or, scarcely less to be pitied, a sweater. All these and many more classes of workers exist to supply the demand that is incarnate in their friends and fellow citizens, acting as the purchasing public. All of us, all the time, are deciding what industries shall survive, and under what conditions.

Obviously the purchaser ultimately decides all production, since any article must cease to be produced if consumers cease to purchase it. The horsehair furniture of the early part of the nineteenth century has now virtually ceased to be manu-

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factured. On the other hand, any article, however injurious to human life and health the conditions of its production may be, or with whatsoever risk they may be attended, continues to be placed on the market so long as there is an effective demand for it; *e. g.*, nitro-glycerine, phosphorous matches, and mine products of all kinds.

This great purchasing public, embracing the whole people, which ultimately decides everything, does so, on the whole, blindly, and in a manner injurious to itself, and particularly to that portion of itself which is engaged in production and distribution.

It would seem an obvious right of the purchaser that the food which he buys at the price asked should be pure and clean; that the garment purchased of an entirely reputable dealer should be free from poisonous dyes, vermin, and the germs of disease; and that both food and garments should leave his conscience free from participation in the employment of young children or of sweaters' victims.

Yet these seemingly obvious rights were, perhaps, never farther from attainment than to-day, in the opening years of the twentieth century. Adulteration of foods has never, in the history of the human race, been carried on upon a scale so vast as at present. The sweating system with its inevitable accompaniment of filth and disease conveyed in the product, persists and increases in spite of sixty years of effort of the philanthropists and the needle-workers to check it.

The oldest recognized legal right of the purchaser

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is to have his goods as they are represented. To sell goods under false pretenses has long been an offense punishable with more or less severity. But of late this right, if it was ever widely enforceable, has become largely illusory. In the vast complications of modern production and distribution, conditions have arisen such that the individual purchaser at the moment of buying, cannot possibly ascertain for himself whether the representation of the seller is accurate or not. The rule *caveat emptor* fails when the purchaser is prevented by the nature of the case from exercising *enlightened* care. Thus in the case of adulterated foods, or of foods exposed to filth or disease in the course of preparation, and in the case of garments sewed in tenements, the purchaser is at the mercy of the producer and the distributor, and is debarred from exercising care in these respects at the moment of purchasing.

Not only may a department store advertise with impunity in a dozen daily newspapers that "all our goods are made in our own factory," when it neither owns nor controls a factory, but the sales-clerks may safely reiterate the assurance over the counter in regard to an individual garment which, in truth, was finished in a tenement house by a bedridden consumptive. The machinery for identification is so imperfect, the difficulties in the way of tracing a garment are so many and so subtle, that the law has no more terrors for a mendacious sales-clerk than for the reckless advertising agent, or for the business office of those daily papers which thrive upon the wholesale mendacity of retail commerce.

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Yet the demand for opportunity to obtain garments and food which may be purchased with a clear conscience grows imperative, has become, indeed, an ardent and abiding desire of enlightened purchasers who long for some trustworthy assurance that they are free from participation in the employment of children, in starvation wages and in the continuance of the sweating system. Granted that this new aspiration may be far from general, far from achieving its own gratification on any large scale, the mere fact that it is present in the minds of thousands of purchasers involves a new ethical standard on their part and must, in the course of time, bring fundamental changes throughout wide reaches of production and distribution.

The relation of this aspiration to certain legislation forms the subject of this and the ensuing chapter.

Ignorance of Conditions of Production.—The most serious obstacle to the realizing of this aspiration is the willing ignorance of the masses, particularly of the masses of women who constitute the direct purchasers of the largest portion of the articles used for personal consumption. Even the producers, themselves, suffer so keenly from the lack of intelligence of their customers, that they are fitting out museums for the purpose of educating them, the Commercial Museum of Philadelphia being a promising type of such undertakings.

Recognizing no duty in this matter, asserting no right, the unintelligent purchasers tempt the greed of producers and distributors. Devoid of enlight-

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ened imagination, these purchasers exert no stimulus favorable to the honest manufacturer.

Because the germs of the deadliest diseases are not discernible by the eye, because they have no conspicuous and offensive smell, a shopping public devoid of imagination remains easily unaware of their presence on the counters of reputable merchants. In the same way, ices and syrups colored in tints and shades unknown to the fruits and flowers of nature, arouse no imaginative wonder. Peas of brilliant green in January, corn taken as yellow from the can in March as from the ear in July, these impossible objects are credulously accepted by the buying multitude. Why? Because it prefers not to know the truth.

Because the purchasing public, on the whole, prefers at present not to know the facts, we are all in danger of eating aniline dyes in tomatoes, jams, jellies, candies, ices, fruit syrups, flavoring and coloring extracts; and salicylic acid in our canned peas and other vegetables which we insist upon having preserved of midsummer hue at midwinter. We wear more or less arsenic in our print goods and the germs of tuberculosis and of countless other diseases in our outer garments.

A physician who visits among the poorest of the poor in New York City recently found a woman in the last stages of consumption, making, as she lay propped among her pillows, little boxes for wedding cake, licking the edges to moisten the gum to make it hold together. The teacher of a class of defective children in the same city, while visiting the home of

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a lad whose left arm and right hand had been amputated by reason of cancerous growths, found the father suffering from tuberculosis, but making a trivial addition to the family income by cracking walnuts (for which he was paid seven cents a pound if no kernels were broken and three cents a pound if his work was imperfect). The father complained that he lost much time in fetching and carrying the nuts and kernels between the store and his home, and could crack but fifteen pounds in three days.

The individual purchaser would doubtless prefer to eat nuts cracked in a workroom not frequented by a father afflicted with tuberculosis and little son mutilated by the ravages of cancer. The individual has, however, at present no method of enforcing this reasonable preference.

We are all much in the position of the Italian immigrants in any of our great cities. They support at least one store for the sale of imported macaroni, vermicelli, sausage (bologna and other sorts), olive oil, Chianti wine, and Italian cheese and chestnuts. These articles are all excessively costly, by reason of transportation charges and the import duties involved; but the Italians are accustomed to using them and prefer a less quantity of these kinds of food to a greater abundance of those cheaper and more accessible supplies by which they are surrounded. The pitiful result is that the importer buys the least quantity of the Italian produce requisite for the purpose of admixture with American adulterants. The most flagrant example of this is, perhaps, the use of Italian olive oil, of which vir-

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tually none really pure is placed upon the market for sale at retail. What the Italian immigrant gets is the familiar Italian label, the well-known package with its contents tasting more or less as it tasted at home in Italy. What the actual ingredients are he knows no more than an American knows what he is eating when he places his so-called butter or honey upon his so-called wheat-cakes. The demand of the Italians in America for Italian food-products, although large, persistent, and maintained at a heavy sacrifice on the part of the purchasers, is not an effective demand, because the immigrants have neither the knowledge nor the organization wherewith to enforce it, while the legislation of the various states affords them virtually no redress.

The privilege of remaining thus unintelligent costs the shopping public uncounted thousands of lives and other uncounted thousands of invalids. But it is a privilege dear to modern crowds. Indeed, the preference for things which come from afar, whose industrial history cannot be known to the purchasers, appears to be almost universal. Thus the writer has seen in a filthy hovel, in the grimiest street in Chicago, Sicilian peasant women sewing into the waistbands of the cheapest little knee pants, tags bearing the words *New York*, because the purchasers like the illusion that all garments sold in the United States are made in New York. The same illusion is cherished as to numerous food products—the purchaser will have it that they came from some other place than their real source. Figs from California must be labeled

Smyrna; cotton seed oil from South Carolina must bear French or Italian labels calling it olive oil.

Why all these queer mendacities? Because the purchasing public will have it so! Because the number is still sadly small of those who perceive the duty to know their sources of supply and assert their right to know them; who are willing to sacrifice that deadly privilege of remaining ignorant, which the careless majority exercise at frightful cost of disease spread among innocent families, and of poverty, illness and death among the workers. The willingly ignorant purchaser carries a heavy share of the guilt of the exploiting manufacturer and the adulterating distributor.¹

Some Typical Purchasers.—How inadequate is the individual demand of a single wide-awake customer, is well shown by the experience of a conscientious shopper of the writer's acquaintance. Deeply moved by an eloquent appeal on behalf of the sweaters' victims and their sufferings, she determined to free her own conscience by buying only goods made in factories and workrooms, never in home sweat-shops. She began her search for such goods in the leading department store in which she had always fitted out her boys for school. The

¹ In England, a large body of purchasers has, for more than one generation, striven to attain an effective knowledge of its sources of supply, and to organize demand for the express purpose of influencing the conditions of distribution, namely the coöperative societies. In America, however, the coöperative movement (aside from insurance and building and loan societies) has gained no considerable headway in either production or distribution. The work of the trade unions in the direction of affording information and arousing an interest in the conditions of production will be dealt with later.

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sales-clerk assured her that, "All our goods are made in our own factory; we handle no sweat-shop goods." Being a canny person and well-instructed, she asked for a written assurance of that fact signed by a member of the firm, to be sent home with the goods. They were never sent, although this was an excellent customer whom the firm was in the habit of obliging if possible. This process she repeated in several stores and outfitting establishments, until it became clear to her mind that, alone and unaided, she could never free her individual conscience. The loneliness of this enlightened purchaser is one of the instructive phenomena of our times. The great, careless, thoughtless mass of American men and women have performed the act attributed to the ostrich. Hiding their minds in the pleasanter oblivion, they have pretended that the enemy was not present.

During the long period in which there had not yet been discovered a practicable method of dealing with the sweating system, many otherwise intelligent people deliberately adopted a policy of ignoring conditions which they saw no way of improving. Thus it was once the fortune of the writer to address a club of unusually influential women, on the conditions of work in the needle-trades in Chicago, as they existed during the smallpox epidemic of 1894. The story was a painful one of a disorganized trade, pauperism of skilled workers, destruction of home life in the tenements, incompetence in the Board of Health, filth, disease and death. The members listened with visible impatience. In the course of

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the discussion which followed one member said: "This club exists for the purpose of education and recreation. Listening to the recital this afternoon certainly cannot be regarded as recreation. Unless the speaker can offer a method by which we may participate in some practical effort for the improvement of conditions in the needle-trades, our way of spending this afternoon can have no claim to be regarded as education. For my part, I find it satisfactory to buy garments wherever I find them attractive, and then send them to the steam-cleaner."

Manifestly this individualistic solution of the problem of the needle-trades was insufficient, even from the point of view of the speaker, for any ordinary cleaning of those days would certainly not have reached the germs of smallpox or of scarlet fever; and few persons share the willingness of that speaker to buy goods trusting to the efficacy of subsequent disinfection. Since, however, there was at that time no method available which could be offered to the critic, the writer was left defenseless. The community has borne both the risk of infection and the guilt of participation in maintaining the sweating system with sadly complete equanimity, far more amiably, indeed, than it has endured the painful process of enlightenment.

Among all the cherished forms of ignorance, none is more tenacious than that of the prosperous purchaser able and willing to pay for the best that the market affords and convinced that, whatever the sorrows of purchasers of ready-to-wear goods, he is safe, because he gets his garments only of the

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merchant tailor and pays a high price for the assurance that they are made up under conditions which guard him against disease, and enable the merchant tailor to pay the working tailor a fair price for his labor. But this customer is really no better off than the well-instructed club woman making her ineffectual search for righteously made ready-to-wear goods for her boys. For example, as factory inspector of Illinois, the writer was one day in search of a cigarmaker who was said to have smallpox in his family, during the terrible epidemic of 1894. Quite by accident a tailor was discovered newly moved into the suspected house, and not yet registered with the department or with the local board of health. In this tailor's shop, which was his dwelling, there was a case of smallpox. In the same shop there was, also, a very good overcoat, such as gentlemen were paying from sixty to seventy dollars for in that year. In the collar was a hang-up strap bearing the name of a merchant tailor in Helena, Montana. Now, that merchant tailor had had, in his store window in Helena, excellent samples of cloth from which the customer had ordered his coat. The Helena tailor had taken the necessary measurements and had telegraphed them, together with the sample-number of the cloth, to the wholesale house in Chicago, of which he was an agent. The wholesaler had had the coat cut and had sent it to the kitchen-tailor in whose sickroom in an infected house in Chicago it was fortunately discovered. But for the happy accident of the finding of the tailor during a search for an entirely

different person, the purchaser in Helena, Montana, would surely have bought smallpox germs in his expensive coat.

Beside this fatuous belief that his custom-work, because it is costly, is made under clean and wholesome conditions, the purchaser of expensive garments usually comforts his conscience with the assumption that the working tailor who makes them receives some substantial share of the high price in the form of wages. While it is true that the tailors who do custom work have a more stable trade union than workingmen in the ready-to-wear branches, and command, therefore, somewhat better pay, it is also true that the tailor in this case, as in scores of others during the same epidemic, was driven by extreme poverty to conceal the dreadful fact that he had smallpox in his family, through fear of losing a few days' or a few weeks' work. So the high price of the coat did not even entitle the customer in Helena, Montana, to an easy conscience on the score of the wages paid to the people who worked upon it.

In the matter of wages, however, there is no longer an available excuse for ignorance on the part of the purchaser as to the wages paid for the manufacture of his garments; and to-day, he who remains ignorant upon this important point does so by his own choice. For the tailors were already, at that time, offering a label attached to goods made under conditions of pay and of hours of work satisfactory to both the employer and the worker.

Efforts to Enlighten Purchasers.—Clearly the first step towards the assertion of the rights of the

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purchaser is the acquisition of knowledge; and it is an idiosyncrasy of the present industrial situation that a large part of the effort exerted for the enlightenment of purchasers has come, not from themselves, but from manufacturers, physicians and philanthropists (in the form of restrictions upon the sale of drugs, or recommendations in favor of municipally prepared vaccine, anti-toxine, etc.), from public authorities in the shape of official reports, from the Consumers' League in its endeavor to form a large and stable body of organized purchasers, and finally and chiefly from the trade unions, disseminating information in the interest of better working conditions for themselves.

Among all these agencies, the press and the advertising merchants might be expected to appear. These have, however, little claim to any educational quality in their endeavor. Their exertions have been directed distinctly not toward education. Rather they have been meant to stimulate, to persuade, incite, entice, and induce the indifferent to purchase. Much of the current advertising, of which the patent medicine advertisement may be taken as the type, is aimed directly at the ignorance of the purchaser. Nearly all of it is aimed at the cupidity of the public and it, therefore, offers cheapness as the one great characteristic. It is immoral rather than ethical.

Such measures as exist for the inspection and testing of food products have usually been obtained either by hygienists and physicians for philanthropic purposes, or by producers who were furthering

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their own interests while nominally promoting those of the purchaser. Such is the requirement that oleomargarine shall be colored pink when offered for sale in certain states, nominally for the protection of consumers, who may not care whether the substance which they use for frying or for spreading on bread is made of the milk of the cow or the fat of the steer. The people who obtained the enactment of this law were not the outraged consumers of oleomargarine, demanding to be protected against it, but the farmers whose butter market was threatened by the invasion of the oleomargarine.

Similar protection to American purchasers of foreign food products is afforded by the federal bureau with its laboratories for the investigation of imported articles, nominally in the interest of the public health, but really in the interest of the American producer, whose adulterations are left by the federal government to the varying efficiency and honesty of local boards of health, and state chemists, and food and dairy commissions.

In consequence of these diverse and multifarious exertions on behalf of the purchasers, there have grown up regulations of strangely unequal effectiveness. Thus in many cities the sale of a small number of well-known deadly drugs is hedged about with precautions intended to prevent murder and suicide by the ancient method of poisoning. In some cases, the purchaser of such drugs must be identified, and must state the purpose for which the purchase is made. Arsenic and strychnine, having an old established reputation as possible enemies of

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human life, and but slight profit for the retailer in the quantities in which they are sold to individual purchasers, are surrounded by precautions; and the package may even have to be conspicuously labeled with skull and crossbones, so that no careless third party can unintentionally come to harm.

Meanwhile the milk sold by the grocer next door to the druggist may be conveying typhoid germs in every bottle, and his cream may be so thickened with corn-starch and other substances as to starve any baby depending upon it; or serve as a gradual poison to a diabetic patient conscientiously endeavoring to follow his prescribed diet of fats and to avoid starch in all its forms. The products of the dairy have an excellent reputation as bases of wholesome feeding for infants and invalids; the purchaser is not habitually on guard against them, as he is forewarned against the corner druggist's arsenic and strychnia, nor has he any available means of personal self-defense. The typhoid germ and the thickening substance added to his cream and milk he cannot discover for himself at will. He must take his chances of protection through the intelligence and faithfulness of the municipal officials who deal with the milk supply. The constant appalling death rate of infants who depend upon milk, in all great cities, demonstrates the insufficiency of this agency, under present conditions.

Only the intelligent farmer, managing his own dairy, or the coöperative society owning its dairies and buying its own product, can be certain of avoiding poisons, quite as dangerous to life and health as

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strychnia and arsenic, with which American society has not yet learned to deal by any effective summary procedure. The experience of some of the English cities, and of Rochester, New York, seems to indicate that the difficulties of the milk supply can be met only by the institution of municipal milk, analogous to the municipal water supply; and municipal provision of all useful drugs, analogous to the present municipal supplies of vaccine and anti-toxine serum.

On the other side from the dairyman, the druggist's next door neighbor, perhaps, is a tailor, who may be actively engaged in poisoning society in yet a different manner, by the sale of garments made in places in which there is infectious disease transmissible in articles exposed to it. In this case, also, as in the case of the dairyman's milk, the customer is at the mercy of the community and its officials. For when he orders a suit, it is out of his power to sit in the tailor's shop while the garment is cut, and then follow it whithersoever the merchant tailor may send it, first to a workshop to be stitched, afterward to a second place in which the buttonholes may be made, and then to a third place, commonly a tenement-dwelling, in which the vest and trousers are felled and otherwise completed before the garment is sent back to the tailor for the removal of whatever grease and vermin it may have acquired in its travels. For the tailor, as for the dairyman, there has never yet been brought to bear any precautionary measure adequately protective for the customer.

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Scarcely more availing than the restrictions upon strychnia and arsenic in the wilderness of modern retail trade, are the efforts of the public officials to protect the purchasing public by the dissemination of information. The Department of Labor at Washington, the state bureaus of labor, the state inspectors of factories, the municipal and state boards of health, the state chemists and dairy commissions, all publish annually or biennially (some of them quarterly, monthly, and weekly) information for the enlightenment of the citizens. But very little of this information has, hitherto, served the purpose of the individual purchaser. If I have read the reports of all these officers, I am not only in as great danger as before of buying glucose for sugar, acetic acid for vinegar, and paper in the soles of my shoes; but I am in as great danger as before of buying smallpox, measles, scarlet fever, infectious sore eyes and a dozen forms of disease of the skin in my new garments. For not one of these officials publishes the list of the kitchen-tailors to whom the merchant tailor gives his goods to be made up; just as not one of them can possibly give information whereby adulterations of foods can be successfully detected in the private kitchen.

On the other hand, the available official information already existing has hitherto remained largely ineffectual. In vain has the fact been printed that a certain bouillon (so extensively advertised as particularly delicate and suitable for the use of aged persons and little children) is boiled in such close proximity to the fertilizer storage of the packing

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establishment that the factory inspectors fall ill on the days of inspection of these premises. The bouillon continues to be served at the luncheons of the socially aspiring. Official statements on all these matters, safely buried in official reports, do not reach and influence the great mass of the buyers.

For many generations manufacturers have been offering to their patrons the guarantee of the brand, whereby the producer stakes his reputation upon the excellence of the article bearing his name or device. But the public attaches such slight importance to this guarantee that, at present, many factories send out more goods without the brand than with it, not wishing to shoulder the discredit incident to their cheapest and most worthless product, which yet proves the more profitable portion of the total output.

The difficulties of the manufacturers in their efforts to enlighten purchasers are greatly intensified by the extraordinary incompetence of the "average" purchaser to judge articles on their merits. For certain great modern industries men have devised tests for the product, and warships, locomotives, railway bridges, and electrical installations can all be tried and tested before the bills are paid. But for the bulk of the products intended for personal use, nothing effective has been designed corresponding to these tests. Especially is this true of all those branches of manufacture which were once carried on by women in the home, and have now gone out into shops and factories. Concerning these products, purchasers must still rely upon

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their individual skill as buyers. The old rule *caveat emptor* is here carried out to its utmost application.

The most promising step forward in the effort to educate the purchasing public has been taken whenever a state has required the manufacturer of an article of food or medicine to state clearly and truthfully the ingredients composing each package offered for sale. This is a direct appeal to the intelligence of the purchasing public. Such measures become effective just in proportion as the purchasers coöperate with the officials who are charged with the duty of testing and analyzing samples bought in the ordinary course of trade. A community in which this coöperation is well sustained protects the life and health of its citizens, stimulates their intelligence in a direction of ever-increasing industrial importance, and enforces honesty upon producers who are under the heaviest moral strain when left unsustained under the pressure of competition.

The same principle underlies a bill entitled "An Act for Preventing the Adulteration or Misbranding of Foods or Drugs, and for Regulating Traffic Therein," which has twice passed the House of Representatives only to fail each time of passage by the Senate. This is the attempted application of the principle that the purchaser is of right entitled to trustworthy information furnished by the producer and guaranteed by the ceaseless activity of officials created for the purpose of examining the products

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and testing the veracity of the labels attached to them.

By providing for a continuous appeal to the intelligence of the individual purchaser, and an ever present warning to the producer to tell the truth as to his product, this bill¹ promises an important ethical gain through legislation.

¹ For the text of this bill see Appendix V.

CHAPTER VII

THE RIGHTS OF PURCHASERS, AND THE COURTS

The more closely the rights of purchasers are scrutinized, the more clearly it appears that they are social rights. However much they may present themselves to the mind as individual, personal rights, the effort to assert them invariably brings the experience that they are inextricably interwoven with the rights of innumerable other people. In the last analysis they cannot be asserted without the previous assertion of the claim of the weakest and most defenseless persons in the community.

It has been suggested in a previous chapter that the most obvious rights of the purchaser are, to have his goods as they are represented, and to have food pure and garments free from poison and infection when bought of reputable dealers at the price asked; and, finally and most important, to be free from participating indirectly, through the purchase of his goods, in the employment of children and of the victims of the sweating system.

Before, however, these fundamental rights of any purchaser can be established as a matter of course, it occurs incidentally that the lives of infants must be safe from the poison of unclean milk and adul-

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terated foods, and the consciences of the wage-earners cleansed of the degradation implied in preparing impure foods for the market. In the process, honesty must be forced upon the poisoners (by means of adulterations in food and germs in apparel) who now thrive upon the ignorance and credulity of the buying public.

Before the individual purchaser can vindicate his own personal rights, the whole body of purchasers are constrained to save childhood for the children, and home life for the workers who dwell in tenements. The garret of the humblest widow must be safe from invasion by the materials and the processes of industry. The childhood of the dullest orphan must be secure from the burden of toil. On no easier terms can the conscience of the citizen as purchaser be freed from participation in the meanest forms of cruelty, the sacrifice of the weak and the defenseless to the search for cheapness.

These ends can be accomplished, however, only by comprehensive statutes sustained by decisions of the highest courts, and enforced by endless effort of the purchasers and the wage-earners defending their interests together. Under the pressure of competition, the highest ethical level possible to our social life can be reached only through legislation in this, its highest and finest sense.

The New York Decision of 1884; (In re Jacobs).—These truths find an illustration in the history of a disastrously unsuccessful effort of the cigarmakers to protect by statute their own exclusive interests, through the enactment of a meas-

ure prohibiting the manufacture of cigars and the manipulation of tobacco in tenement houses in the state of New York. In 1884, when this effort was made, tenement-manufacture was of relatively slight extent compared with its subsequent development, and was confined almost exclusively to the materials mentioned. The sweating system, as we know it, was then in its earliest infancy, and the manufacture of garments and other articles under it was so slight as not even to suggest to the cigar-makers the inclusion of the needle-trade workers in the struggle for the statutory prohibition of work in the tenements.

When the law prohibiting the manufacture of cigars and the manipulation of tobacco in the tenements had been in force less than a year it was pronounced unconstitutional by the Court of Appeals, in the decision of the case of *in re Jacobs*.¹

Had that earliest statute been sustained by the Court of Appeals of New York it is safe to assert that the odious system of tenement manufacture would long ago have perished in every trade in every city in the Republic.

Because it was undeniably class legislation, applying only to those tenement-dwellers who were employed in producing the commodities including in some form tobacco as an ingredient, and omitting all others, it is impossible to defend the statute. But the deplorable results of the decision of the Court of Appeals, which its defective form called forth, are of such far-reaching ethical, industrial

¹ See Appendix IV.

and social character as to deserve careful consideration.

The framers of the law described it in its title as "An Act to Improve the Public Health," by prohibiting certain narrow lines of manufacture in the tenements. But the court held that its title did not properly describe it,—that it was not, in fact, a measure calculated to improve the public health.

On this last point the court was clearly in error as to the facts. The proof of the pudding is in the eating; and, since the annulment of the prohibition, tenement-house manufacture has developed enormously, has produced disease unceasingly by overcrowding not merely individual tenements, but whole districts of every city in which it has existed, and has distributed disease in the communities into which the manufactured goods have carried germs emanating from infected tenements.

Physicians, nurses, inspectors of numerous kinds, friendly visitors of divers charities, residents of settlements in districts in which the sweated industries are carried on, all testify to the impossibility of preventing the spread of disease in the general public where this system of manufacture continues. In 1885, however, this was not yet the case. The germ theory was not yet so thoroughly a part of the public consciousness as it has since become. Nor was the present body of evidence as to the close connection of the diseases of the tenement-dwellers with epidemics in remote parts of the country, whose inhabitants wear tenement-made garments, then available.

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A startling proposition contained in the decision in *re Jacobs* is that the health of the employees is not the public health! "What possible relation can cigarmaking in any building have to the health of the general public?" asked the Court of Appeals of New York in 1885.

It is not long since a visiting nurse among the tenements of New York City found a dying consumptive licking the tips of cigarettes which he was manufacturing. This is but one of thousands of observations which have been made and recorded since the decision in *re Jacobs* embodied that cynical question. During the intervening twenty years the fact has been imprinted upon the public mind that the whole system of manufacture in the tenements does involve a degree of danger to the public health such that it is no longer to be tolerated; that this danger is not confined to the employees in the tenements themselves, but that it is shared by them with the whole purchasing public.

It is not now needful to prove that the health of the workers is an important part of the health of the public. Every epidemic during the years since 1885 has proved that the disease of the workers in the tenements becomes, with certainty and precision, the disease of the public, transmitted in the textures of the goods worked upon in the sickrooms of the invalids of the tenements.

A comparison of the text of this New York decision of 1885 with the decisions of the Supreme Court of the United States in the cases of *Holden vs. Hardy* in 1898, and of *Lochner vs. New York* in

1905, shows the vast transition which has taken place in the space of twenty years in the judicial view of the public health.

Says the court in the decision in *re Jacobs*: "To justify this law, it would not be sufficient that the use of tobacco may be injurious to some persons, or that its manipulation may be injurious to those who are engaged in its preparation and manufacture; but it would have to be injurious to the public health."

In the later cases, cited in previous chapters, it has been shown that the whole contention of the United States Supreme Court is that the industry must be injurious to the persons engaged in it, in order that their freedom of contract in relation to it may be restricted by statute.

Because it was class legislation, by reason of confining its prohibition to workers in tobacco, and because it was not, in the opinion of the Court of Appeals, sufficiently obviously a measure for the improvement of the public health, the court pronounced the law prohibiting the manufacture of tobacco in tenements unconstitutional and void, alleging that it deprived the cigarmakers of "some portion of their personal liberty."

But, in sustaining his "right to live in his own house, or to work at any lawful trade therein,"—a right of which the tenement-dwellers had laboriously striven to be rid, in order to gain instead thereof the opportunity of working in factories and workshops furnished by the manufacturer,—the court, in fact, established the "right" of manufac-

turers to turn the kitchens and bedrooms of the poorest of the poor into workrooms and storage places, a "right" of which the most ample use has for twenty years been made by the manufacturers.

While thus inadvertently defending the undesired "right" of the tenement-dwellers to suffer the invasion of manufacture into the innermost recesses of the family life, the court inadvertently deprived the purchasing public of the power of tracing the processes of manufacture which are carried on, in name at least, for its sake. It thus deprived the purchaser, in effect, of the power to exercise the right to knowledge of his sources of supply.

Moreover, by the decision, the right of the workingman who lives in a tenement house to enjoy his home, using it for the purposes for which a home is established and free from the intrusion of his daily bread-winning employment, was inferentially shown to be, like his right to leisure, one which must be achieved by the method of trade organization.

The Development and Regulation of the Sweating System.—This inference the tenement-house workers drew without loss of time. They abandoned all effort to secure sweeping prohibitions, and have since that time striven to deal with their problem by the twofold method of regulation by statute and regulation by public opinion. Sweeping prohibition being unattainable, the next step was towards partial prohibition. Work upon certain specified articles in kitchens and bedrooms was prohibited to all persons not members of the family. Although a man could not be shielded from the in-

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vasion of his dwelling by the materials of his industry, he could at least be spared the presence of strange men and women. An immediate consequence of this was the establishment of workshops in the rear of the tenements, sometimes with steam power, sometimes with foot power; but always with the custom of sending the handwork into the dwellings. The list of articles thus kept sacred to the family, short at first, grew from year to year, and now includes thirty-four items. Baking bread and cakes, cracking nuts for candy manufacturers, candying fruit for sale to school children, stringing beads for passementeries, pickling cucumbers, and drying macaroni are a few of the items not yet embraced in the list.

By adopting these partial prohibitions, while denying to the purchasers and the workers the protection of a complete prohibition of all manufacture in the tenements, the state has instilled into the minds of its industrially weaker citizens a sense of confusion mixed with contempt for the law. For, where a sweeping prohibition would have been logical and relatively easy to enforce, the petty, teasing restrictions enacted piecemeal have been fruitful of the spirit of evasion. When it was a misdemeanor for a man's sister to sew a cloak in his dwelling, but perfectly legal for his wife to sew it, while his sister could legally sew an apron or a skirt for the same employer, the one impression conveyed to the mind of the newly arrived immigrant was that this law was not intended to be obeyed. And it never has been obeyed; nor is there any prospect, even in

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its present amended form, that it will be uniformly obeyed. For it is clearly non-enforceable.

In the vain effort to enforce partial restrictions which are in the nature of the case non-enforceable, a provision was enacted in 1899 requiring a license from the factory inspector for every person or group of persons who worked at any process of manufacture of some thirty articles, in any tenement house or in a building in the rear of one. After this provision had been in force for five years the writer one day, in 1904, observed a woman walking along Mulberry street, New York, carrying a huge bundle of knee pants on her head. The burden bearer mounted to the fifth floor of an Italian tenement and threw her bundle down upon a singularly greasy kitchen table. Asked to show her license to work, she brought out, with the friendly smile and courteous manner of the Sicilian peasant woman, a letter from the New York State Department of Labor, dated some seven weeks before, notifying her that her premises were unfit for licensing, and that no more work must be done in them until they had been thoroughly cleansed, re-inspected and licensed! The cheerful needle-woman, unable to read in any language, but reassured by the seal of the state of New York on the envelope, had assumed that this was the license for which she had been told to apply, and had worked away happy in the consciousness of having obeyed the law.

The only gain to any part of the community derived from the licensing law during the five years in

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which it retained its original form, was the discovery of the places in which manufacture was carried on. More than thirty thousand licenses were issued, and the ugly fact was brought to light that there were more licensed groups of tenement-workers in the four most undesirable streets of New York City, Mott, Mulberry, Elizabeth and Chrystie streets, than in any other streets.

Since the promulgation of the decision in *re Jacobs*, in 1885, the state and the trade unions have alike been burdened with the despairing duty of performing the impossible. It is utterly impossible to keep the system of manufacture in the tenements, and to avoid its evil consequences.

Tenement work means the underpaid husband letting his wife earn the rent with her needle, instead of insisting, as it is clearly his duty to do, upon wages enough to maintain his family. It means boys and girls of ten years kept at home from school, in violation of the compulsory education law, to do the housework and take care of the younger children while the mother sews for the market.

Tenement work means the use of foot power in competition with steam power, a ruinous strain upon the health of every man, woman and child subjected to it. Tenement work means an endless working day in the tenement at the foot power machine in the "rush" season, followed by the shutting down of the factory for want of orders.

Tenement work means steady downward pressure upon the wages of the factory workers, to whom it can always be said: "If you do not like our terms

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in the factory, we can send the work into the homes." Tenement work means the unavoidable spreading of disease and the frequent breaking out of epidemics, not only in the cities where it is carried on, but in all those distant places to which the product may be sent.

In the effort to minimize the inevitable consequences of homework, the state has subjected the dwellers in the tenements to threefold inspection, in addition to the oversight of the federal government, whose tax collectors were already charged with the duty of following them up for the purpose of gathering the tax upon tobacco.

Because the personal liberty of a workingman would be interfered with, if his employer were prohibited from requiring him to work at home, the unhappy dwellers in the tenements have seen their homes invaded by all manner of materials, from tobacco leaves and stems, to the bales of paper and tubs of paste required for making paper bags, and by three sets of inspectors,—of the Board of Health, of the Tenement House Department, and of the Bureau of Factory Inspection.

Moreover, in the alleged interest of their "personal liberty" these victims of the sweating manufacturers have been constrained to live within walking distance of their employer's place of business, for the burden-bearer between the merchant tailor and his home-worker is usually a woman or a child, reduced by the smallness of the pay to saving car-fare by living near the "shop." Instead of able-bodied men and girls of the family, walking empty

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handed to and from their work, or riding perhaps to a desirable suburb by trolley, the burden-bearing woman or child has determined the distance to be traversed. Thus the tenement house problem has been artificially intensified and complicated; and by reason of the unlimited competition of the women of the tenements, wages have been kept at such a level that neither time nor car-fare can be spared by an adult for fetching and carrying. Hence some child is sacrificed by being kept from school to serve as beast of burden, whenever the goods are such as can safely be trusted to a child.

Moreover, all this sacrifice of the family leaves the task of the officials a hopeless one. No Board of Health has ever succeeded in knowing, every day in the year, where all the goods are concealed in the tenements, nor where all the children are who may be coming down with diphtheria, or shedding rags and patches of their skin after light cases of scarlet fever.

Trade Unions and the Union Label.—The decision of the Court of Appeals in *re Jacobs* virtually turned over to the wage-earners the task of providing, through the machinery of their organizations, for the protection of themselves and the purchasers against the evils of the sweating system. For twenty years the unions have faithfully striven to perform a task which it was, from the beginning, impossible that they should achieve. Just as they long before introduced child-labor legislation and factory inspection, which have come to be recognized as benefactions to the whole people; so they

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now invented that method of dealing with the sweated trades, by offering the label as a guaranty of conditions approved by the workers which is accepted as the best available under the circumstances, and in view of the conditions imposed by the decision of the Court of Appeals in *re Jacobs*. It is, of course, out of their power ever to do, with palliatives, what a sweeping prohibition could have done long since.

The public, however, cannot afford to allow the courts to relegate to the labor organizations the duty of protecting the public health against the reckless willingness of manufacturers to take risks. For, if the union is not strong enough to dominate the trade (and no union of garment workers has ever been strong enough to do this), the public must take the consequences in disease and death sent out from the tenement sewing rooms. Or, if a union were not only insufficiently strong but imperfectly honest as well, the public would pay the penalty for every label dishonestly sold to contractors for use in places which fell below the accepted standard of wholesome and clean conditions.

Or, let us suppose that a portion of the public may be honestly opposed on principle to the maintenance of trade unions; and unwilling, therefore, to purchase goods guaranteed by the union label. Such abstainers, if left without other means of discrimination in favor of goods made under wholesome conditions, are in danger, not only of incurring disease and death, but of disseminating them throughout the community.

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Finally, a large part of the membership of the unions in the garment trades consists of immigrants so recently arrived from Eastern Europe as to have no adequate standards of wholesome conditions for home and workshop, of persons wholly unprepared to defend their own health, much more that of the general public. Clearly the unions, however valuable to their members and to the community in other relations, cannot, in the nature of things, be a sufficient guardian of the health and safety of all the purchasing public.

While, however, the unions have not achieved the impossible, and have not succeeded in performing a task of protection of the public health which should never have been asked of any voluntary organization, they have been vastly strengthened by the effort to do this. Baffled in the endeavor to do away with tenement work by law, they turned to the development of their label, advertising it, obtaining legal guarantees against infringement, and publishing all the abhorrent facts connected with the sweating system and attached, inferentially, to the goods which bore no label. Their label, whether or not it has always guaranteed satisfactory cleanliness and the absence of disease from the workroom, has announced to the world that the conditions as to hours and wages (the organization of employees being understood, of course), in the factories in which it was used, were satisfactory to the workers in those factories. This recommendation has gradually come to possess a value such that in some industries the manufacturers pay for the label a price

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which covers the cost of advertising on a large scale.

Since goods bearing the trade union label commonly cost somewhat more than other goods, the workingmen who take the trouble to pay the price required are stimulated to look sharply after the integrity of the union which offers a label.

What, now, is the position of that portion of the public which disapproves of the union and repudiates its guarantee and its label? Except within the narrow limits of the Consumers' League, with its label on women's and children's white stitched underwear, such purchasers have no guarantee whatever. Moreover, only a small fraction of the innumerable industries involved in the preparation of apparel is included among the organizations of labor. While labels may be found in many cities by seekers after men's hats and shoes, outer-wear, neckties, gloves, shirts, etc., none is discernible for woven underwear, on which much handwork is regularly done in homes; while for women the union label is scarcely upon the market outside of the shoe trade.

In the manufacture of garments and apparel of all kinds for women, the workers are chiefly young girls and women who have, hitherto, formed no stable union; who have no funds for advertising on a large scale, and no real power of enforcing any provisions for their own protection or that of the public, which has for twenty years left to them this impossible task.

A community which turns over to the working-

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women the task of assuring to it clean and wholesome workrooms in the tenements, for the production of its wearing apparel, gets exactly what it deserves,—the sweating system upon the largest scale that the world has ever seen.

After the state of New York shall have arrived at some method of doing away with tenement manufacture and sweating, after these twin iniquities shall have been effectually abolished, the trade unions will resume their normal function of guaranteeing to purchasers who ask for it, the fact that the hours of labor and the wages are satisfactory to the workers in the factory from which the label issues. It is preposterous ever to have asked of them, even inferentially, more than this. They have had imposed upon them by the indirect working of the decision of the Court of Appeals in *re Jacobs*, a task which it was clearly the duty of the state to perform; and it is in no wise to their discredit that they have failed to do the impossible. That discredit attaches to the community which imposed this unwarranted and unwarrantable burden.

Thus we have, after twenty years of effort, two ineffectual methods of dealing with tenement manufacture, pursued side by side. The state, by statute, legalizes the manufacture in the tenements of thirty-four articles, and proceeds by a cumbersome threefold inspection (by the State Factory Inspectors, the Board of Health Inspectors and the Tenement House Department), to minimize the danger to the public health, including that of the workers themselves. But, as has been pointed out, the pub-

lic health is not really safeguarded. The people are merely lulled into a false sense of security.

The unions, meanwhile, have spent untold thousands of dollars in their effort to induce the purchasing public to avoid the dangers attending sweated goods, by the individual method of discrimination against tenement made products and in favor of goods guaranteed by the union label.

Ethical Loss Through Lack of Legislation.—The ethical loss by reason of this decision of the Court of Appeals of New York, quite apart from the loss of money in advertising by the unions and in futile, hopeless inspection on the part of the state, is quite beyond the possibility of calculation.

From the day when this decision became effective, the interests of the purchasing public and of the tenement dwellers have been practically identical, and both have been sacrificed to the convenience and the profit of the manufacturers.

For twenty years the state of New York has proclaimed through its highest court that it cannot protect the homes of its industrially weakest citizens from invasion by the materials of their industry. These materials are owned by rich and powerful employers, strongly organized locally and nationally, and are foisted upon the meager dwellings of the poor solely for the purpose of saving to the employers the cost of heat, light, cleaning and, far more important, rent of workrooms. For the convenience of the powerful, the weakest industrial factors in the community, the widows burdened with young children, the daughters kept at home by bed-

ridden parents, have been invaded by industry and by inspectors. This forcing of industry into the tenements has fostered the belief that work *must* be done by all who live there, particularly if they are poor and sick. Thus devotion to the needle and the pastepot has become a sort of touchstone measuring the "worthiness" or the "helpableness" of the women who have dependent members of the family.

Meanwhile, the manufacturer or the merchant tailor, the owner of the goods, bears no responsibility towards the community, beyond the requirements that he must file with the factory inspectors, when so requested, a correct list, in the English language, of the addresses to which he sends his goods to be made up, and must, before sending goods into a tenement, inquire of the Board of Health whether there is recorded any present case of infectious or communicable disease on the premises.

Before the case in *re Jacobs* can be reversed, and work in the tenements sweepingly prohibited in the interest of the public health, including the health of the workers, it may be necessary to provide—by way of one more last palliative experiment—for placing the goods-owner under a heavy bond for the literal fulfilment of the requirements of the legal restrictions by all the people to whom his goods are entrusted. This would be less than the manufacturer's equitable share of the burden which he inflicts upon society. Since it is for his own convenience and enrichment that the evil of the sweating system is fastened upon society, he should bear the whole burden of the cost of inspection, disinfection

of premises and of goods which have been exposed to infection, prosecution of offenders, etc.

The arguments against prohibition of work in the tenements are to be found in the decision in *re Jacobs*, printed in the appendix. The arguments for prohibiting outright all such work are twofold, those which affect the purchasing public in its health and conscience; and those which affect the workers in the tenements, in their health, their home life, their relation to their industry, and to the life of the community of which they form a part.

The fact that the cigar workers obtained the passage of the law prohibiting the manufacture of cigars and tobacco in the tenements, sufficiently indicates their position on the subject. All the restrictions which have been placed upon tenement-house manufacture during the twenty years since complete prohibition thereof was blocked, have been obtained either by the tenement-house workers, or with their eager help.

It may be urged, however, that they are not judges of what is best for themselves; that their arguments are not sound. It is, therefore, worth while to consider who the tenement-house workers are. They are, first, the able-bodied men whose fathers and sons working in other trades all have workrooms provided for them by their employers, such, for instance, as employees in the printing and binding trades, in wood-working, upholstery, boot and shoe making, and all the other industries in which the use of steam or electricity, or the nature of the goods, make it advantageous to the employer

to have the work done in a factory or a workshop. What possible advantage is gained for these men by working in their kitchens and bedrooms, in the midst of the cooking, washing, scrubbing, and care of the babies? Obviously none!

The second contingent of home-workers are the able-bodied immigrant girls. These suffer the disadvantages of losing contact with the English speaking employers and fellow workers in the factory or workshop. They use foot power instead of steam or electricity, and thus earn less money with more exertion. They spend the day in the same air in which they had spent the night, losing the change and exercise which would attend travel to and from the factory. They lose the *esprit de corps* which arises from work in a group, and their wages are correspondingly wretched. There is no standard of wages and hours; they take what the employer gives them; and they work until the task is accomplished. For them there is no opening hour, no closing time. When work is done, they cease to drive the machine, not until then.

The children whose school life is sacrificed to the need of being on hand to fetch and carry are losers, pure and simple. So are the wretched little boys and girls who are still too young to fetch and carry, but can be employed in stringing beads and pulling basting threads, in pasting boxes and bags, in wrapping paper around strips of wire to make stems for artificial flowers, in digging the kernels out of nuts, or in cracking the nuts themselves.

Finally, there are the widows with young chil-

dren, the daughters with bedridden old fathers or mothers,—the women who cannot leave home to work. For these persons, work in the home is an evil and an evil only. Not one of them can really support herself while doing the housework and caring for her dependents, and the community which requires that a woman so placed shall go through the forms of work for self-support, deserves all the punishment that it receives in the form of transmitted disease. All such women are already in the receipt of charitable aid, and the humane and enlightened thing for the community to do in their case is to make that aid adequate to their needs, absolving them from working for the market, on condition that they take suitable care of the invalids or the children who are dependent upon them. In the long run, the community pays many times over in the form of disease transmitted from the sickrooms, and of reformatory life provided for the children neglected by their overworked mothers in the effort to do the impossible, for every economy which it attempts to make by means of relief withheld from such dependent families.

The men in the trades afflicted with tenement work have always maintained that, if they could be freed from their slavery to their kitchens and bedrooms, and enabled to work in suitable workshops, they could then organize their trade in such ways as to command wages sufficient to support their families, including their sick and dependent relatives. It is only necessary to know somewhat intimately two brothers, one a tailor working at home and the

other a printer working in a shop, to be persuaded of the truth of this contention. For the skill required in the two trades is of about the same grade, the difference being confined to the organization of the industry itself.

There is a wide-spread belief that the prevailing cheapness of ready-made clothing is due to the utilization of the ill-paid labor of women and children in the tenement homes ; that the wage-earner in the non-sweated trades profits by the sufferings of the sweaters' victims, and wears better garments by reason of their poverty and the degradation of this great trade. This is, however, the exact reverse of the truth. The cheapness of our garments is attained in spite of the sweating system, not because of it. Indeed, it is doubtful whether the fall in prices of garments is commensurate with the fall in the prices of the cloth of which they are made. Certain it is that cloth is vastly cheaper than it was thirty years ago. The methods of placing goods of all kinds upon the market (garments and cloth for making garments included) have been revolutionized in the direction of cheapness within the memory of all of us. That part of the work of making garments which lies outside of tenements has also been cheapened by the general application of steam machinery to garment-cutting. These three great modern improvements have enabled the corporations which control the garment trade to prolong the life of the foot-power sewing machine and the tenement-house workroom.

The purchasing public, made gullible, perhaps,

by its own greed for bargains, has willingly believed that in this one set of trades alone primitive machines and petty shops maintaining a multitude of middlemen were really cheaper in the end (because they employ the worst paid women and girls to be found in the field of manufacture) than well-equipped plants, with power furnished by steam or electricity and conducted by managers of higher intelligence.

It has become an axiom in political economy that high-priced labor stimulates the application of machinery. On the other hand, the presence in the tenements of girls who sew on buttons and run errands for wages ranging from thirty cents to seventy cents a week, and of women who sew at foot-power machines for \$3.00 to \$5.00 a week from ten to twenty hours a day during the five to seven months which form the busy season, and receive relief from public and private charities during the remainder of the year, distinctly tends to prolong the present primitive and belated equipment of this part of the garment trades. It is, perhaps, not too much to say that the thousands of women and girls in the tenements present a serious obstacle to the process of lifting the garment trades from their present degradation to the level of the factory trades.

Under the sweating system, the wholesaler or the merchant tailor shifts the burden of rent from himself to the tailor who sews in a tenement-house kitchen or bedroom. The wholesaler or the merchant tailor farther avoids the risk attendant upon

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maintaining a plant equipped with steam or electricity throughout the dull season. He offsets, as far as he can, the added expense of a horde of middlemen, by subdividing the work of the women and girls in the tenements and simplifying it to the utmost extreme, so that skill in the worker is reduced to the last degree, and wages follow skill in the direction of zero. Hence we find in the tenements "hand girls" whose backs grow crooked over the simplest of hemming, felling, and sewing on buttons, and "machine girls" whose exertion of foot power entails tuberculosis and pelvic disorders ruinous to themselves at present and to their children in the future. The foul, ill-ventilated, often damp shops, the excessive speed and intensity of the work, the ceaseless exertion of the limbs throughout interminable days, and the grinding poverty of these workers combine to render consumption the characteristic disease of these trades. The very youth of the workers increases their susceptibility to injury and disease. Young backs grow crooked over the machines, young eyes and membranes are irritated by the fluff and dust disengaged from cheaply dyed woolen goods by flying needles. The eagerness of young workers is stimulated to the highest pitch by ill-paid piece-work and the uncertainty of its continuance.

All this wretchedness, attending this belated survival of primitive organization in a great industry, surely cannot permanently survive in the face of the advantages which mechanical power possesses over foot power. It is only a question of time when the

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garment trades shall be placed upon the factory level.

This change, however, cannot reasonably be expected of the corporations which control the garment trades, or of the growing intelligence of the sweaters' victims. It will be brought about, if at all, by an enlightened public refusing to wear tenement-made garments, and embodying its will in prohibitory legislation carried much farther than the tentative measures of regulation now in force.

A necessary preliminary to this revolt against tenement goods is a clear perception of the truth that no one (except possibly the wholesaler) profits by the pauperism and suffering of the men, women and children who work in tenement rooms.

To the decision of the Court of Appeals of New York in the case in *re Jacobs*, is directly due the continuance and growth of tenement manufacture and of the sweating system in the United States, and its present prevalence in New York.

Among the consequences and the accompaniments of the system are congestion of the population in the tenement districts; the ruin of home life in the dwellings used as workrooms; child labor in the homes; endemic disease (especially tuberculosis) due to the overcrowding and poverty of skilled workers; chronic pauperism of thousands of skilled working people during a part of the year in a series of important trades; insanity due to overwork followed by the anxiety of a prolonged period of unemployment; and suicide, the self-inflicted

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death of a garment-worker being of almost daily occurrence in New York and Chicago.

The extent of these evils cannot, of course, be itemized in detail. They are so great at the present time that unremitting effort is needed to abolish the system of which they are the consequences and the accompaniments.

For this purpose it is necessary to enact a statute so drawn as to meet the opinion of the Court of Appeals that a measure prohibiting only tobacco manufacture in the tenements was insufficient. The new prohibition must include all manufacture in tenements.

The principle that the health of the employees is not a part of the public health and, therefore, not a reason for prohibiting a given *mode* of manufacture is no longer tenable in the presence of the decisions of the Supreme Court of the United States in the cases of *Holden vs. Hardy* and *Lochner vs. New York*. To assure the abandonment of this obsolete position, however, public opinion, including the courts, must be effectively enlightened upon every aspect of tenement-house manufacture.

In the case in *re Jacobs*, the Court of Appeals of New York fell into the same error which has been elsewhere pointed out in the Illinois case, *Ritchie vs. the People*. The court has no apparatus for investigating the conditions of industry. But the legislature, through its investigating committees, possesses all the needful apparatus for investigation. When the court sets up its non-acquaintance with the existing conditions as a reason for over-riding

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the action of the legislature, the purchasing public is left with no redress and no clear line of action marked out for the future.

How can the courts be enlightened and instructed concerning conditions as they exist? This is the burning question which confronts both the purchasers and the wage-earners in all those cases in which the health of the whole community is affected in ways less conspicuous than epidemic smallpox. How can the gradual, cumulative effect of working conditions, and of living conditions, upon the public health, be made obvious to the minds of the judges composing the courts of last resort?

The decisions in the cases in *re Jacobs*, *Ritchie vs. the People*, and *Lochner vs. New York* indicate that a satisfactory reply to this question is a prerequisite to farther ethical gains in wide industrial fields by means of legislation.

APPENDIX I

CANTON COTTON MILLS *vs.* EDWARDS

(Supreme Court of Georgia. June 10, 1904.)

INFANTS—CAPACITY—INJURY TO EMPLOYEE—PETITION

Wylie Edwards, by his next friend, brought suit against the Canton Cotton Mills for personal injuries, alleging that on February 10, 1902, the plaintiff, being a child ten years old, was employed to sweep floors and make bands for the spinning-room. That, in order to get water to drink, it was necessary for him to pass the entire length of defendant's factory, filled with swiftly moving machinery, and that after obtaining a drink of water, and while returning, it was necessary to pass a machine called a "finisher." That he stopped to observe the lap of cotton as it came out of the machine onto the roll. Boylike, and with no knowledge of the danger, he laid his hand on the roll, as he had seen the man in charge of the machine do, when, in some way unknown to the plaintiff, his hand was caught and drawn between the rolls, to his great damage. That plaintiff was not aware of the dangerous character of the machine, nor had he been warned of its danger. That he was so young as not to be aware of the dangerous character of defendant's machinery; nor was he

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capable of appreciating and guarding against such dangers; nor was he capable of understanding, remembering and acting upon warnings that might have been given by defendant; and of all this defendant had full knowledge. That defendant was negligent, in that it retained in its employment, and required to be in its mills among its machinery, a child too young to realize and guard against a danger, and too young to appreciate and act upon any warning, and too young to work in such a place. That it was negligent in failing to warn him, and in failing so to guard its machinery as to make the factory safe for him to work in. That the defendant was negligent in not protecting him from dangers incident to work about a machine of whose dangers he knew nothing, and which, by reason of his youth and inexperience, he was incapable of guarding against.

The defendant demurred on the grounds that the petition set out no cause of action; that the injury was the direct result of plaintiff's own negligence; that it was not negligence in defendant not to warn plaintiff, nor was it negligence to employ a child of the age of plaintiff, nor was it bound to inform him as to the dangerous machines in and about the mills on which plaintiff was not expected to work.

The court overruled the demurrer, and the company excepted.

LAMAR, J. The age of majority and the age under which there can be no criminal responsibility have been arbitrarily declared by statute. But neither nature nor the courts have fixed any definite age at which children attain the capacity to work.

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In some children the mind outruns the body, and in others the body outgrows the mind. Some are weak and undeveloped at the age of fourteen, and others are strong and vigorous at ten. Some at an early age can hunt, drive, ride, swim and work in many occupations with ordinary safety, while others of the same age, with even greater physical strength, by reason of want of experience, would be unable to engage in the same sports or labors without serious risk. The question of capacity, therefore, is not to be determined as a matter of law by the courts, but as a matter of fact by the jury; applying the principle involved in Civ. Code 1895, § 2901, which declares that "due care in a child of tender years is such care as its capacity, mental and physical, fits it for exercising in the actual circumstances of the occasion and situation under investigation." The petition alleged that the plaintiff was ten years old, ignorant of the character of the machine and of the danger of working therewith as he had seen others do; that he had not been warned; that he was incapable of appreciating, remembering or acting upon any warnings that might have been given him; and that the company was not only negligent in failing to warn plaintiff, but also in failing to guard its machinery so as to make the factory safe as a place in which to work. These allegations made it proper to overrule the demurrer. Compare *Evans v. Josephine Mills*, 119 Ga. 448, 46 S. E. 674.

Judgment affirmed. All the justices concurring.

APPENDIX II

RITCHIE *vs.* THE PEOPLE

(Supreme Court of Illinois. March 14, 1895.)

CONSTITUTIONAL LAW—SUBJECT EXPRESSED IN
TITLE—DUE PROCESS OF LAW—EIGHT-HOUR
FACTORY ACT—APPROPRIATIONS.

Act June 17, 1893, § 5, which declares that “no female shall be employed in any factory or workshop more than eight hours in any one day or 48 hours in any one week,” is unconstitutional, as depriving persons of property and liberty without due process of law.

Error to criminal court, Cook county; Nathaniel C. Sears, Judge.

Prosecution of William E. Ritchie for violation of the eight-hour law. Defendant was convicted, and he brings error. Reversed.

MAGRUDER, J. Upon complaint of the factory inspector appointed under the law hereinafter named, a warrant was issued by a justice of the peace of Cook county against plaintiff in error, and upon his appearance, and waiver in writing of jury trial, a trial was had, resulting in a finding of guilty, and the imposition of a fine of five dollars and costs. The complaint charged that on a certain day in February, 1894, plaintiff in error employed a certain adult

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female of the age of more than 18 years at work in a factory for more than eight hours during said day. The plaintiff in error took an appeal to the criminal court of Cook county, and waived a jury, and upon trial in that court before the judge without a jury he was convicted and fined. The case is brought to this court by writ of error for the purpose of reviewing such judgment of the criminal court.

Upon the trial of the cause the defendant below submitted written propositions to be held as law in the decision of the case. By these propositions the trial court was asked to hold that the act of the legislature of Illinois entitled "An act to regulate the manufacture of clothing, wearing apparel, and other articles in this state, and to provide for the appointment of state inspectors to enforce the same, and to make an appropriation therefor," approved June 17, 1893 (Laws Ill. 1893, p. 99), and each and every section thereof, is illegal and void, and contrary to and in violation of the Constitutions of Illinois and of the United States. The court refused all of the propositions so submitted, and exception was taken by the defendant. The present prosecution, as is conceded by counsel for both sides, is for an alleged violation of section 5 of said act. That section is as follows: "No female shall be employed in any factory or workshop more than eight hours in any one day or forty-eight hours in any one week." "Factory" or "workshop" is defined in section 7 of the act as follows: "The words 'manufacturing establishment,' 'factory' or 'workshop,' wherever used in this act, shall be construed to mean any place where goods

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or products are manufactured or repaired, cleaned or sorted, in whole or in part, for sale or for wages." Punishment for violation of the provisions of the act is provided for by section 8 thereof in the following words: "Any person, firm or corporation, who fails to comply with any provision of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than three dollars, nor more than one hundred dollars for each offense."

The main objection urged against the act, and that to which the discussion of counsel on both sides is chiefly directed, relates to the validity of section 5. It is contended by counsel for plaintiff in error that that section is unconstitutional as imposing unwarranted restrictions upon the right to contract. On the other hand, it is claimed by counsel for the people that the section is a sanitary provision, and justifiable as an exercise of the police power of the state. Does the provision in question restrict the right to contract? The words, "no female shall be employed," import action on the part of two persons. There must be a person who does the act of employing and a person who consents to the act of being employed. Webster defines "employment" as not only "the act of employing," but also "the state of being employed." The prohibition of the statute is therefore twofold: First, that no manufacturer or proprietor of a factory or workshop shall employ any female therein more than eight hours in one day; and, second, that no female shall consent to be so employed. It thus prohibits employer and employee from uniting their minds or agreeing upon any longer

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service during one day than eight hours. In other words, they are prohibited, the one from contracting to employ, and the other from contracting to be employed, otherwise than as directed. "To be 'employed' in anything means not only the act of doing it, but also to be engaged to do it; to be under contract or orders to do it." Hence a direction that a person shall not be employed more than a specified number of hours in one day is at the same time a direction that such person shall not be under contract to work for more than a specified number of hours in one day. It follows that section 5 does limit and restrict the right of the manufacturer and his employee to contract with each other in reference to the hours of labor.

Is the restriction thus imposed an infringement upon the constitutional rights of the manufacturer and the employee? Section 2 of article 2 of the constitution of Illinois provides that "no person shall be deprived of life, liberty or property, without due process of law." A number of cases have arisen within recent years in which the courts have had occasion to consider this provision, or one similar to it, and its meaning has been quite clearly defined. The privilege of contracting is both a liberty and property right. Liberty includes the right to acquire property, and that means and includes the right to make and enforce contracts. The right to use, buy, and sell property and contract in respect thereto is protected by the constitution. Labor is property, and the laborer has the same right to sell his labor, and to contract with reference thereto, as has any other

property owner. In this country the legislature has no power to prevent persons who are *sui juris* from making their own contracts, nor can it interfere with the freedom of contract between the workman and the employer. The right to labor or employ labor, and make contracts in respect thereto upon such terms as may be agreed upon between the parties, is included in the constitutional guaranty above quoted. The protection of property is one of the objects for which free governments are instituted among men. Const. III. Art. 2, § 1. The right to acquire, possess, and protect property includes the right to make reasonable contracts; and when an owner is deprived of one of the attributes of property, like the right to make contracts, he is deprived of his property, within the meaning of the Constitution. The fundamental rights of Englishmen, brought to this country by its original settlers, and wrested, from time to time, in the progress of history, from the sovereigns of the English nation, have been reduced by Blackstone to three principal or primary articles, "the right of personal security, the right of personal liberty, and the right of private property." The right to contract is the only way by which a person can rightfully acquire property by his own labor. "Of all the rights of persons it is the most essential to human happiness." This right to contract, which is thus included in the fundamental rights of liberty and property, cannot be taken away "without due process of law." The words "due process of law" have been held to be synonymous with the words "law of the land." Blackstone says: "The third absolute right, inher-

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ent in every Englishman, is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land." The "law of the land" is "general public law, binding upon all the members of the community, under all circumstances, and not partial or private laws, affecting the rights of private individuals, or classes of individuals." The "law of the land" is the opposite of "arbitrary, unequal, and partial legislation." State v's. Loomis, *supra*. The legislature has no right to deprive one class of persons of privileges allowed to other persons under like conditions. The man who is forbidden to acquire and enjoy property in the same manner in which the rest of the community is permitted to acquire and enjoy it is deprived of liberty in particulars of primary importance to his pursuit of happiness. If one man is denied the right to contract as he has hitherto done under the law, and as others are still allowed to do by the law, he is deprived of both liberty and property to the extent to which he is thus deprived of the right. In line with these principles, it has been held that it is not competent, under the Constitution, for the legislature to single out owners and employers of a particular class, and provide that they shall bear burdens not imposed on other owners of property or employers of labor, and prohibit them from making contracts which other owners or employers are permitted to make.

We are not unmindful that the right to contract may be subject to limitations growing out of the

duties which the individual owes to society, to the public, or the government. These limitations are sometimes imposed by the obligation to so use one's own as not to injure another, by the character of property as affected with a public interest or devoted to a public use, by the demands of public policy or the necessity of protecting the public from fraud or injury, by the want of capacity, by the needs of the necessitous borrower as against the demands of the extortionate lender. But the power of the legislature to thus limit the right to contract must rest upon some reasonable basis, and cannot be arbitrarily exercised. It has been said that such power is based in every case on some condition, and not on the absolute right to control. Where legislative enactments, which operate upon classes of individuals only, have been held to be valid, it has been where the classification was reasonable and not arbitrary.

Applying these principles to the consideration of section 5, we are led irresistibly to the conclusion that it is an unconstitutional and void enactment. While some of the language of the act is broad enough to embrace within its terms the manufacture of all kinds of goods or products, other provisions are limited to the manufacture of "coats, vests, trousers, knee pants, overalls, cloaks, shirts, ladies' waists, purses, feathers, artificial flowers, or cigars, or any wearing apparel of any kind whatsoever." The act is entitled "An act to regulate the manufacture of clothing, wearing apparel and other articles," etc. Under the rule of construction heretofore laid down by this court that general and specific words, which are

capable of an analogous meaning, being associated together, take color from each other, so that the general words are restricted to a sense analogous to the less general, it would seem that the general words, "and other articles," would be restricted to a meaning analogous to the meaning of the words "clothing, wearing apparel," and consequently that they would only embrace articles of the same kind as those expressly enumerated. But whether this is so, or not, we are inclined to regard the act as one which is partial and discriminating in its character. If it be construed as applying only to manufacturers of clothing, wearing apparel, and articles of a similar nature, we can see no reasonable ground for prohibiting such manufacturers and their employees from contracting for more than eight hours of work in one day, while other manufacturers and their employees are not forbidden to so contract. If the act be construed as applying to manufacturers of all kinds of products, there is no good reason why the prohibition should be directed against manufacturers and their employees, and not against merchants, or builders, or contractors, or carriers, or farmers, or persons engaged in other branches of industry, and their employees therein. Women employed by manufacturers are forbidden by section 5 to make contracts to labor longer than eight hours in a day, while women employed as saleswomen in stores, or as domestic servants, or as bookkeepers, or stenographers, or typewriters, or in laundries, or other occupations not embraced under the head of manufacturing, are at liberty to contract for as many hours of labor in a

day as they choose. The manner in which the section thus discriminates against one class of employers and employees and in favor of all others places it in opposition to the constitutional guaranties hereinbefore discussed, and so renders it invalid.

But, aside from its partial and discriminating character, this enactment is a purely arbitrary restriction upon the fundamental rights of the citizen to control his or her own time and faculties. It substitutes the judgment of the legislature for the judgment of the employer and employee in a matter about which they are competent to agree with each other. It assumes to dictate to what extent the capacity to labor may be exercised by the employee, and takes away the right of private judgment as to the amount and duration of the labor to be put forth in a specified period. Where the legislature thus undertakes to impose an unreasonable and unnecessary burden upon any one citizen or class of citizens it transcends the authority intrusted to it by the constitution, even though it imposes the same burden upon all other citizens or classes of citizens. General laws may be as tyrannical as partial laws. A distinguished writer upon constitutional limitations has said that general rules may sometimes be as obnoxious as special, if they operate to deprive individual citizens of vested rights, and that while every man has a right to require that his own controversies shall be judged by the same rules which are applied in the controversies of his neighbors, the whole community is also entitled, at all times, to demand the protection of the ancient principles which shield private rights

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against arbitrary interference, even though such interference may be under a rule impartial in its operation. Section 1 of article 2 of the Constitution of Illinois provides as follows: "All men are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property governments are instituted among men, deriving their just powers from the consent of the governed." Liberty, as has already been stated, includes the right to make contracts, as well with reference to the amount and duration of labor to be performed as concerning any other lawful matter. Hence the right to make contracts is an inherent and inalienable one, and any attempt to unreasonably abridge it is opposed to the Constitution. As was aptly said in *Leep vs. Railway Co.*, *supra*: "When the subject of contract is purely and exclusively private, unaffected by any public interest or duty to person, to society, or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof." An instance of the care with which this right to contract has been guarded may be found in chapter 48 of the Revised Statutes of this state, where an act, passed in 1867, makes eight hours of labor in certain employments a legal day's work, "where there is no special contract or agreement to the contrary," and the second section of which act contains the following provision: "Nor shall any person be prevented by anything here-

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in contained from working as many hours over time or extra hours as he or she may agree." An ordinance of the city of Los Angeles, making it a misdemeanor for any contractor to employ any person to work more than eight hours a day where the work was to be performed under any contract with the city, was held to be unconstitutional and void, the supreme court of California there saying: "It is claimed in support of the petition that this ordinance was unconstitutional and void. We think this objection is well taken. It is simply an attempt to prevent certain parties from employing others in a lawful business, and paying them for their services, and is a direct infringement of the right of such persons to make and enforce their contracts. If the service to be performed were unlawful, or against public policy, or the employment were such as might be unfit for certain persons; as, for example, females or infants, the ordinance might be upheld as a sanitary or police regulation, but we cannot conceive of any theory upon which a city could be justified in making it a misdemeanor for one of its citizens to contract with another for services to be rendered, because the contract is that he shall work more than a limited number of hours per day." In the case of *Low vs. Printing Co.* (recently decided by the supreme court of Nebraska, June 6, 1894) 59 N. W. 362, an act of the legislature of that state, providing that eight hours should constitute a legal day's work for all classes of mechanics, servants, and laborers throughout the state, excepting those engaged in farm and domestic labor, and making violation of the pro-

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visions a misdemeanor, was held to be unconstitutional and void, both as being special legislation and as attempting to prevent persons legally competent to enter into contracts from making their own contracts.

But it is claimed on behalf of defendant in error that this section can be sustained as an exercise of the police power of the state. The police power of the state is that power which enables it to promote the health, comfort, safety, and welfare of society. It is very broad and far-reaching, but is not without its limitations. Legislative acts passed in pursuance of it must not be in conflict with the Constitution, and must have some relation to the ends sought to be accomplished; that is to say, to the comfort, welfare, or safety of society. Where the ostensible object of an enactment is to secure the public comfort, welfare, or safety, it must appear to be adapted to that end. It cannot invade the rights of persons and property under the guise of a mere police regulation, when it is not such in fact; and where such an act takes away the property of a citizen or interferes with his personal liberty, it is the province of the courts to determine whether it is really an appropriate measure for the promotion of the comfort, safety, and welfare of society. There is nothing in the title of the act of 1893 to indicate that it is a sanitary measure. The first three sections contain provisions for keeping workshops in a cleanly state, and for inspection to ascertain whether they are so kept. But there is nothing in the nature of the employment contemplated by the act which is in itself unhealthy or un-

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lawful or injurious to the public morals or welfare. Laws restraining the sale and use of opium and intoxicating liquors have been sustained as valid under the police power. Undoubtedly, the public health, welfare, and safety may be endangered by the general use of opium and intoxicating drinks. But it cannot be said that the same consequences are likely to flow from the manufacture of clothing, wearing apparel, and other similar articles. "The manufacture of cloth is an important industry, essential to the welfare of the community." We are not aware that the preparation and manufacture of tobacco into cigars is dangerous to the public health. It is not the nature of the things done, but the sex of the persons doing them, which is made the basis of the claim that the act is a measure for the promotion of the public health. It is sought to sustain the act as an exercise of the police power upon the alleged ground that it is designed to protect woman on account of her sex and physique. It will not be denied that woman is entitled to the same rights, under the constitution, to make contracts with reference to her labor, as are secured thereby to men. The first section of the fourteenth amendment to the Constitution of the United States provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." It has been held that a woman is both a "citizen" and a "person" within the meaning

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of this section. The privileges and immunities here referred to are, in general, "protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole." As a "citizen," woman has the right to acquire and possess property of every kind. As a "person," she has the right to claim the benefit of the constitutional provision that she shall not be deprived of life, liberty, or property without due process of law. Involved in these rights thus guaranteed to her is the right to make and enforce contracts. The law accords to her, as to every other citizen, the right to gain a livelihood by intelligence, honesty, and industry in the arts, the sciences, the professions, or other vocations. Before the law, her right to a choice of vocations cannot be said to be denied or abridged on account of sex. The tendency of legislation in this state has been to recognize the rights of woman in the particulars here specified. The act of 1867, as above quoted, by the use of the words "he or she," plainly declares that no woman shall be prevented by anything therein contained from working as many hours overtime or extra hours as she may agree; and thereby recognizes her right to contract for more than eight hours of work in one day. An act approved March 22, 1872, entitled "An act to secure freedom in the selection of an occupation," etc., provides that "no person shall be precluded or debarred from any occupation, profession or employment (except military) on account of sex."

The married woman's act of 1874 authorizes a married woman to sue and be sued without joining her husband, and provides that contracts may be made and liabilities incurred by her and enforced against her to the same extent and in the same manner as if she were unmarried; and that she may receive, use, and possess her own earnings, and sue for the same in her own name, free from the interference of her husband or his creditors. Section 5 of the act of 1893 is broad enough to include married women and adult single women, as well as minors. As a general thing, it is the province of the legislature to determine what regulations are necessary to protect the public health and secure the public safety and welfare. But, inasmuch as sex is no bar, under the constitution and law, to the endowment of woman with the fundamental and inalienable rights of liberty and property, which include the right to make her own contracts, the mere fact of sex will not justify the legislature in putting forth the police power of the state for the purpose of limiting her exercise of those rights, unless the courts are able to see that there is some fair, just, and reasonable connection between such limitation and the public health, safety, or welfare proposed to be secured by it. *People vs. Gillson, supra.*

Counsel for the people refer to statements in the text-books recognizing the propriety of regulations which forbid women to engage in certain kinds of work altogether. Thus it is said in Cooley on Constitutional Limitations, that "some employments . . . may be admissible for males and improper for

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females, and regulations recognizing the impropriety, and forbidding women engaging in them, would be open to no reasonable objection." Attention is also called to the above-mentioned act of March 22, 1872, which makes an exception of military service, and provides that nothing in the act shall be construed as requiring any female to work on streets or roads, or serve on juries. But, without stopping to comment upon measures of this character, it is sufficient to say that what is said in reference to them has no application to the act of 1893. That act is not based upon the theory that the manufacture of clothing, wearing apparel, and other articles is an improper occupation for women to be engaged in. It does not inhibit their employment in factories or workshops. On the contrary, it recognizes such places as proper for them to work in by permitting their labor therein during eight hours of each day. The question here is not whether a particular employment is a proper one for the use of female labor, but the question is whether, in an employment which is conceded to be lawful in itself, and suitable for woman to engage in, she shall be deprived of the right to determine for herself how many hours she can and may work during each day. There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel—for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow. But the police power of the state can only be permitted to limit or abridge such a fundamental right

as the right to make contracts when the exercise of such power is necessary to promote the health, comfort, welfare, or safety of society or the public; and it is questionable whether it can be exercised to prevent injury to the individual engaged in a particular calling. The court of appeals of New York, in passing upon the validity of an act "to improve the public health by prohibiting the manufacture of cigars and preparation of tobacco in any form in tenement houses," etc., has said: "To justify this law, it would not be sufficient that the use of tobacco may be injurious to some persons, or that its manufacture may be injurious to those who are engaged in its preparation and manufacture; but it would have to be injurious to the public health." In *re Jacobs, supra*. Tiedeman, in his work on Limitations of Police Power, says: "In so far as the employment of a certain class in a particular occupation may threaten or inflict damage upon the public or third persons, there can be no doubt as to the constitutionality of any statute which prohibits their prosecution of that trade. But it is questionable, except in the case of minors, whether the prohibition can rest upon the claim that the employment will prove hurtful to them. . . . There can be no more justification for the prohibition of the prosecution of certain callings by women because the employment will prove hurtful to themselves than it would be for the state to prohibit men from working in the manufacture of white lead because they are apt to contract lead poisoning, or to prohibit occupation in certain parts of iron-

smelting works, because the lives of the men so engaged are materially shortened." Section 86.

We are also referred to statements made in some of the text-books to the effect that the legislature may limit the hours of labor of women in manufacturing establishments. These statements appear to be based entirely upon the decision of the supreme court of Massachusetts in *Com. v/s. Hamilton Manuf'g Co.*, 120 Mass. 385. There it was held that an act providing that no woman over the age of 18 years should be employed by any person, firm, or corporation in any manufacturing establishment more than 10 hours in any one day was valid. But, under the Constitution of Massachusetts (part 2, c. 1, § 1, Art. 4), the legislature has power to ordain all manner of reasonable and wholesome statutes, with or without penalties, not repugnant to the Constitution, "as they shall judge to be for the good and welfare of the commonwealth, and for the governing and ordering thereof, and of the subjects of the same." The decision referred to was evidently made in view of the large discretion so vested in the legislative branch of the government; and it was said that the act ought to be maintained as a health or police regulation, because the legislature deemed the employment of manufacturing dangerous to health. But the Massachusetts case is not in line with the current of authority, as it assumes that the police power is practically without limitation. As has been already stated, the legislature cannot so use that power as to invade the fundamental rights of the citizen; and it is for the courts to decide whether a

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measure, which assumes to have been passed in the interest of the public health, really "relates to, and is convenient and appropriate to promote, the health." We said in *Lake View vs. Rose Hill Cemetery Co.*, 70 Ill. 191: "As a general proposition, it may be stated it is the province of the law-making power to determine when the exigency exists calling into exercise this power. What are the subjects of its exercise is clearly a judicial question." The reasoning of the opinion in the Massachusetts case cited does not seem to us to be sound. It assumes that there is no infringement upon the employer's right to contract, because he may employ as many persons or as much labor as he chooses; nor upon the employee's right to contract, because she may labor as many hours as she chooses in some other occupation than that specified in the statute. This is a begging of the question. The right to contract would be valueless if it could not be exercised with reference to the particular subject-matter in hand. If its exercise is forbidden between two persons competent to contract, and concerning a lawful subject of contract, it is none the less abridged because other persons may be permitted to contract, or because the same persons may be at liberty to contract about some other matter. We cannot more appropriately close the discussion of this branch of the case than by quoting, and adopting as our own, the following words of the New York court of appeals in *re Jacobs*, *supra*: "When a health law is challenged in the courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property, without due

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process of law, the courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. This we have not been able to see in this law, and we must, therefore, pronounce it unconstitutional and void. In reaching this conclusion, we have not been unmindful that the power which courts possess to condemn legislative acts which are in conflict with the supreme law should be exercised with great caution, and even with reluctance. But, as said by Chancellor Kent: 'It is only by the free exercise of this power that courts of justice are enabled to repel assaults and to protect every part of the government and every member of the community from undue and destructive innovations upon their charter rights.'"

* * * * *

Our conclusion is that section 5 of the act of 1893, and the first clause of section 10 thereof, are void and unconstitutional for the reasons here stated. These are the only portions of the act which have been attacked in the argument of counsel. No reason has been pointed out why they are not distinct and separate from the balance of the act. The rule is that, where a part of a statute is unconstitutional, the remainder will not be declared to be unconstitutional also, if the two are distinct and separable, so that the latter may stand though the former becomes of no effect. We do not wish to be understood by anything herein said as holding that section 5 would be invalid if it was limited in its terms to females who are minors. The judgment of the criminal court of

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Cook county is reversed, and the cause is remanded to that court, with directions to dismiss the prosecution. Reversed and remanded.

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HOLDEN *vs.* HARDY

(Supreme Court of the United States. February 28, 1898.)

CONSTITUTIONAL LAW—DUE PROCESS—EQUAL PROTECTION—EIGHT-HOUR LAWS

1. "Due process of law" implies at least a conformity with natural and inherent principles of justice, and forbids that one man's property, or right to property, shall be taken for the benefit of another, or for the benefit of the state, without compensation, and that no one shall be condemned in his person or property without an opportunity of being heard in his own defense.

2. The Utah statute forbidding the employment of workmen for more than eight hours per day in mines, and in the smelting, reduction, or refining of ores or metals, is within the police power of the state, and not an unconstitutional interference with the right of private contract, or a denial of due process of law or the equal protection of the laws.

Mr. Justice Brewer and Mr. Justice Peckham dissenting.

In Error to the Supreme Court of the State of Utah.

These were writs of error to review two judgments of the Supreme Court of the state of Utah

denying application of the plaintiff in error, Holden, for his discharge upon two writs of habeas corpus, and remanding him to the custody of the sheriff of Salt Lake county.

The facts in case No. 264 were substantially as follows: On June 20, 1896, complaint was made to a justice of the peace of Salt Lake City that the petitioner, Holden, had unlawfully employed "one John Anderson to work and labor as a miner in the underground workings of the Old Jordan Mine, in Bingham cañon, in the county aforesaid, for the period of ten hours each day; and said defendant, on the date aforesaid and continuously since said time, has unlawfully required said John Anderson, under and by virtue of said employment, to work and labor in the underground workings of the mine aforesaid for the period of ten hours each day, and that said employment was not in case of an emergency, or where life or property was in imminent danger,—contrary," etc.

Defendant, Holden, having been arrested upon a warrant issued upon said complaint, admitted the facts set forth therein, but said he was not guilty, because he is a native-born citizen of the United States, residing in the state of Utah; that the said John Anderson voluntarily engaged his services for the hours per day alleged; and, that the facts charged did not constitute a crime, because the act of the state of Utah which creates and defines the supposed offense is repugnant to the Constitution of the United States in these respects:

"It deprives the defendant and all employers and

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employees of the right to make contracts in a lawful way, and for lawful purposes.

"It is class legislation, and not equal or uniform in its provisions.

"It deprives the defendant and employers and employees of the equal protection of the laws, abridges the privileges and immunities of the defendant as a citizen of the United States, and deprives him of his property and liberty without due process of law."

The court, having heard the evidence, found the defendant guilty as charged in the complaint, imposed a fine of \$50 and costs, and ordered that the defendant be imprisoned in the county jail for a term of 57 days, or until such fine and costs be paid.

Thereupon petitioner sued out a writ of habeas corpus from the Supreme Court of the state; annexing a copy of the proceedings before the justice of the peace, and praying his discharge. The Supreme Court denied his application, and remanded him to the custody of the sheriff, whereupon he sued out this writ of error, assigning the unconstitutionality of the law.

In the second case the complaint alleged the unlawful employment by Holden of one William Hooley to work and labor in a certain concentrating mill—the same being an institution for the reduction of ores—for the period of 12 hours per day. The proceedings in this case were precisely the same as in the prior case, and it was admitted that there was no distinction in principle between the two cases.

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J. M. Wilson, for plaintiff in error. Chas. J. Pence, for defendant in error.

Mr. Justice Brown, after stating the facts in the foregoing language, delivered the opinion of the court.

This case involves the constitutionality of an act of the legislature of Utah entitled "An act regulating the hours of employment in underground mines and in smelters and ore reduction works." The following are the material provisions:

"Section 1. The period of employment of workmen in all underground minès or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

"Sec. 2. The period of employment of workingmen in smelters and all other institutions for the reduction or refining of ores or metals shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

"Sec. 3. Any person, body corporate, agent, manager, or employer, who shall violate any of the provisions of sections one and two of this act, shall be guilty of a misdemeanor."

The Supreme Court of Utah was of opinion that, if authority in the legislature were needed for the enactment of the statute in question, it was found in that part of article 16 of the constitution of the state which declared that "the legislature shall pass laws to provide for the health and safety of employees in factories, smelters and mines." As the article deals exclusively with the rights of labor, it is here reproduced in full, as exhibiting the author-

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ity under which the legislature acted, and as throwing light upon its intention in enacting the statute in question (Laws 1896, p. 219) :

"Section 1. The rights of labor shall have just protection through laws calculated to promote the industrial welfare of the state.

"Sec. 2. The legislature shall provide by law for a board of labor, conciliation and arbitration which shall fairly represent the interests of both capital and labor. The board shall perform duties and receive compensation as prescribed by law.

"Sec. 3. The legislature shall prohibit:

"(1) The employment of women, or of children under the age of fourteen years, in underground mines.

"(2) The contracting of convict labor.

"(3) The labor of convicts outside prison grounds, except on public works under the direct control of the state.

"(4) The political and commercial control of employees.

"Sec. 4. The exchange of blacklists by railroad companies, or other corporations, associations or persons is prohibited.

"Sec. 5. The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

"Sec. 6. Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the state, county or municipal governments; and the legislatures shall pass laws to provide

for the health and safety of employees in factories, smelters and mines.

"Sec. 7. The legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article."

The validity of the statute in question is, however, challenged upon the ground of an alleged violation of the fourteenth amendment to the Constitution of the United States, in that it abridges the privileges or immunities of citizens of the United States, deprives both the employer and the laborer of his property without due process of law, and denies to them the equal protection of the laws. As the three questions of abridging their immunities, depriving them of their property, and denying them the protection of the laws, are so connected that the authorities upon each are, to a greater or less extent, pertinent to the others, they may properly be considered together.

Prior to the adoption of the fourteenth amendment, there was a similar provision against deprivation of life, liberty, or property without due process of law incorporated in the fifth amendment; but as the first eight amendments to the Constitution were obligatory only upon congress, the decisions of this court under this amendment have but a partial application to the fourteenth amendment, which operates only upon the action of the several states. The fourteenth amendment, which was finally adopted July 28, 1868, largely expanded the power of the federal courts and congress, and for the first time authorized the former to declare invalid all

laws and judicial decisions of the states abridging the rights of citizens, or denying them the benefit of due process of law.

This amendment was first called to the attention of this court in 1872, in an attack upon the constitutionality of a law of the state of Louisiana, passed in 1869, vesting in a slaughter-house company therein named the sole and exclusive privilege of conducting and carrying on a live-stock landing and slaughter-house business within certain limits specified in the act, and requiring all animals intended for sale and slaughter to be landed at their wharves or landing places. While the court in that case recognized the fact that the primary object of this amendment was to secure to the colored race, then recently emancipated, the full enjoyment of their freedom, the further fact that it was not restricted to that purpose was admitted both in the prevailing and dissenting opinions, and the validity of the act was sustained as a proper police regulation for the health and comfort of the people. A majority of the cases which have since arisen have turned, not upon a denial to the colored race of rights therein secured to them, but upon alleged discriminations in matters entirely outside of the political relations of the parties aggrieved.

These cases may be divided, generally, into two classes: First, where a state legislature or a state court is alleged to have unjustly discriminated in favor of or against a particular individual or class of individuals, as distinguished from the rest of the community, or denied them the benefit of due

process of law; second, where the legislature has changed its general system of jurisprudence by abolishing what had been previously considered necessary to the proper administration of justice, or the protection of the individual.

Among those of the first class, which, for the sake of brevity, may be termed "unjust discriminations," are those wherein the colored race was alleged to have been denied the right of representation upon juries, as well as those wherein the state was charged with oppressing and unduly discriminating against persons of the Chinese race, and those wherein it was sought, under this amendment, to enforce the right of women to suffrage, and to admission to the learned professions.

To this class is also referable all those cases wherein the state courts were alleged to have denied to particular individuals the benefit of due process of law secured to them by the statutes of the state, as well as that other large class, to be more specifically mentioned hereafter, wherein the state legislature was charged with having transcended its proper police power in assuming to legislate for the health or morals of the community.

Cases arising under the second class, wherein a state has chosen to change its methods of trial to meet a popular demand for simpler and more expeditious forms of administering justice, are much less numerous, though of even greater importance, than the others. A reference to a few of these cases may not be inappropriate in this connection. Thus, in *Walker vs. Sauvinet*, 92 U. S. 90, which

was an action brought by a colored man against the keeper of a coffee house in New Orleans for refusing him refreshments, in violation of the constitution of the state securing to the colored race equal rights and privileges in such cases, a statute of the state provided that such cases should be tried by jury, if either party demanded it, but, if the jury failed to agree, the case should be submitted to the judge, who should decide the same. It was held that a trial by jury was not a privilege or immunity of citizenship which the states were forbidden to abridge, but the requirement of due process of law was met if the trial was had according to the settled course of judicial proceedings. "Due process of law," said Chief Justice Waite, "is process due according to the law of the land. This process in the states is regulated by the law of the state." This law was held not to be in conflict with the Constitution of the United States.

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In *Railway Co. v. Mackey*, 127 U. S. 205, 8 Sup. Ct. 1161, it was said that a statute in Kansas abolishing the fellow-servant doctrine, as applied to railway accidents, did not deny to railroads the equal protection of the laws, and was not in conflict with the fourteenth amendment. The same ruling was made with reference to statutes requiring railways to erect and maintain fences and cattle guards, and make them liable in double the amount of damages claimed, for the want of them.

In *Hallinger v. Davis*, 146 U. S. 314, 13 Sup. Ct. 105, it was held that a state statute conferring upon

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an accused person the right to waive a trial by jury, and to elect to be tried by the court, and conferring power upon the court to try the accused in such case, was not a violation of the due-process clause of the fourteenth amendment.

* * * * *

An examination of both these classes of cases under the fourteenth amendment will demonstrate that, in passing upon the validity of state legislation under that amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that, in some of the states, methods of procedure which, at the time the constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests, while, upon the other hand, certain other classes of persons (particularly those engaged in dangerous or unhealthful employments), have been found to be in need of additional protection. Even before the adoption of the constitution, much had been done toward mitigating the severity of the common law, particularly in the administration of its criminal branch. The number of capital crimes in this country, at least, had been largely decreased. Trial by ordeal and by battle had never existed here, and had fallen into disuse in England. The earlier practise of the common law, which denied the benefit of witnesses to a person accused of felony, had

been abolished by statute, though, so far as it deprived him of the assistance of counsel and compulsory process for the attendance of his witnesses, it had not been changed in England. But, to the credit of her American colonies, let it be said that so oppressive a doctrine had never obtained a foothold there.

The present century has originated legal reforms of no less importance. The whole fabric of special pleading, once thought to be necessary to the elimination of the real issue between the parties, has crumbled to pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands, and placed upon a practical equality with them, with respect to the acquisition, possession, and transmission of property. Imprisonment for debt has been abolished. Exemptions from execution have been largely added to, and in most of the states homesteads are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all. In several of the states, grand juries, formerly the only safeguard against a malicious prosecution, have been largely abolished; and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three-fourths majority. This

case does not call for an expression of opinion as to the wisdom of these changes, or their validity under the fourteenth amendment, although the substitution of prosecution by information in lieu of indictment was recognized as valid in *Hurtado vs. California*, 110 U. S., 516, 4 Sup. Ct., 111, 292. They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that, while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuations, and that the Constitution of the United States, which is necessarily and to a large extent inflexible, and exceedingly difficult of amendment, should not be so construed as to deprive the states of the power to so amend their laws as to make them conform to the wishes of the citizens, as they may deem best for the public welfare, without bringing them into conflict with the supreme law of the land.

Of course, it is impossible to forecast the character or extent of these changes; but in view of the fact that, from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and particularly to the new relations between employers and employees, as they arise.

* * * * *

The same subject was also elaborately discussed

by Mr. Justice Matthews in delivering the opinion in *Hurtado vs. California*: "This flexibility and capacity for growth is the peculiar boast and excellence of the common law. . . . The Constitution of the United States was ordained, it is true, by descendants of Englishmen, who inherited the traditions of English law and history; but it was made for an undefined and expanding future, and for a people gathered and to be gathered from many nations, and of many tongues. And, while we take just pride in the principles and institutions of common law, we are not to forget that, in lands where other systems of jurisprudence prevail, the ideas and processes of civil justice are also not unknown. Due process of law, in spite of the absolutism of continental governments, is not alien to that code which survived the Roman Empire as the foundation of modern civilization in Europe, and which has given us that fundamental maxim of distributive justice,—'*Suum cuique tribuere.*' There is nothing in Magna Charta, rightly construed as a broad charter of public right and law, which ought to exclude the best ideas of all systems and of every age; and, as it was the characteristic principle of the common law to draw its inspiration from every fountain of justice, we are not to assume that the sources of its supply have been exhausted. On the contrary, we should expect that the new and various experiences of our own situation and system will mold and shape it into new, and not less useful, forms." We have seen no reason to doubt the soundness of these views. In the future growth of

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the nation, as heretofore, it is not impossible that congress may see fit to annex territories whose jurisprudence is that of the civil law. One of the considerations moving to such annexation might be the very fact that the territory so annexed should enter the Union with its traditions, laws and systems of administration unchanged. It would be a narrow construction of the Constitution to require them to abandon these, or to substitute for a system which represented the growth of generations of inhabitants a jurisprudence with which they had had no previous acquaintance or sympathy.

We do not wish, however, to be understood as holding that this power is unlimited. While the people of each state may doubtless adopt such systems of laws as best conform to their own traditions and customs, the people of the entire country have laid down in the Constitution of the United States certain fundamental principles, to which each member of the Union is bound to accede as a condition of its admission as a state. Thus, the United States are bound to guaranty to each state a republican form of government, and the tenth section of the first article contains certain other specified limitations upon the power of the several states, the object of which was to secure to congress paramount authority with respect to matters of universal concern. In addition, the fourteenth amendment contains a sweeping provision forbidding the states from abridging the privileges and immunities of citizens of the United States, and denying them the

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benefit of due process or equal protection of the laws.

This court has never attempted to define with precision the words "due process of law," nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice, which inhere in the very idea of free government, which no member of the Union may disregard, as that no man shall be condemned in his person or property without due notice, and an opportunity of being heard in his defense. What shall constitute due process of law was perhaps as well stated by Mr. Justice Curtis in *Murray's Lessees vs. Land Co.*, 18 How. 272, 276, as anywhere. He said: "The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave congress free to make any process 'due process of law' by its mere will. To what principles, then, are we to resort to ascertain whether this process enacted by congress is due process? To this the answer must be twofold: We must examine the Constitution itself, to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute

law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition, by having been acted on by them after the settlement of this country."

It was said by Mr. Justice Miller, in delivering the opinion of this court in *Davidson vs. New Orleans*, 96 U. S. 97, that the words "law of the land," as used in Magna Charta, implied a conformity with the "ancient and customary laws of the English people," and that it was wiser to ascertain their intent and application by the "gradual process of judicial inclusion and exclusion as the cases presented for decision shall require, with the reasoning on which such decisions may be founded." Recognizing the difficulty in defining with exactness the phrase "due process of law," it is certain that these words imply a conformity with natural and inherent principles of justice, and forbid that one man's property or right to property, shall be taken for the benefit of another, or for the benefit of the state, without compensation, and that no one shall be condemned in his person or property without an opportunity of being heard in his own defense.

As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a state law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further, and say that as property can only be legally acquired, as between

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living persons, by contract, a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be equally invalid.

The latest utterance of this court upon this subject is contained in the case of *Allgeyer vs. Louisiana*, 165 U. S. 578, 591, 17 Sup. Ct. 427, in which it was held that an act of Louisiana which prohibited individuals within the state from making contracts of insurance with corporations doing business in New York was a violation of the fourteenth amendment. In delivering the opinion of the court, Mr. Justice Peckham remarked: "In the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property must be embraced the right to make all proper contracts in relation thereto; and, although it may be conceded that this right to contract in relation to persons or property, or to do business within the jurisdiction of the state, may be regulated, and sometimes prohibited, when the contracts or business conflict with the policy of the state as contained in its statutes, yet the power does not and cannot extend to prohibiting a citizen from making contracts of the nature involved in this case, outside of the limits and jurisdiction of the state, and which are also to be performed outside of such jurisdiction."

This right of contract, however, is itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application

during the past century, owing to an enormous increase in the number of occupations which are dangerous or so far detrimental to the health of employees as to demand special precautions for their well-being and protection, or the safety of adjacent property. While this court has held (notably in the cases of *New Orleans vs. Davidson*, 95 U. S. 465, and *Yick Wo vs. Hopkins*, 118 U. S. 356, 6 Sup. Ct. 1064) that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances, and a large discretion "is necessarily vested in the legislature, to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests." *Lawton vs. Steele*, 152 U. S. 133, 136, 14 Sup. Ct. 499.

The extent and limitations upon this power are admirably stated by Chief Justice Shaw in the following extract from his opinion in *Massachusetts vs. Alger*, 7 Cush. 84.

"We think it a settled policy, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified his title, holds it under the implied liability that its use may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth, as well in the interior as that bordering on the tide waters, is derived di-

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rectly or indirectly from the government, and held subject to those general regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitation in their enjoyment as will prevent them from being injurious, and to such reasonable restraints and regulations by law as the legislature, under the government and controlling power vested in them by the Constitution, may think necessary and expedient."

This power, legitimately exercised, can neither be limited by contract nor bartered away by legislation.

While this power is necessarily inherent in every form of government, it was, prior to the adoption of the constitution, but sparingly used in this country. As we were then almost purely an agricultural people, the occasion for any special protection of a particular class did not exist. Certain profitable employments, such as lotteries and the sale of intoxicating liquors, which were then considered to be legitimate, have since fallen under the ban of public opinion, and are now either altogether prohibited, or made subject to stringent police regulations. The power to do this has been repeatedly affirmed by this court.

While the business of mining coal and manufacturing iron began in Pennsylvania as early as 1716, and in Virginia, North Carolina, and Massachusetts even earlier than this, both mining and manufacturing were carried on in such a limited way, and by such primitive methods, that no special laws were

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considered necessary, prior to the adoption of the Constitution, for the protection of the operatives; but, in the vast proportions which these industries have since assumed, it has been found that they can no longer be carried on, with due regard to the safety and health of those engaged in them, without special protection against the dangers necessarily incident to these employments. In consequence of this, laws have been enacted in most of the states designed to meet these exigencies, and to secure the safety of persons peculiarly exposed to these dangers. Within this general category are ordinances providing for fire escapes for hotels, theaters, factories and other large buildings; a municipal inspection of boilers; and appliances designed to secure passengers upon railways and steamboats against the dangers necessarily incident to these methods of transportation. In states where manufacturing is carried on to a large extent, provision is made for the protection of dangerous machinery against accidental contact; for the cleanliness and ventilation of working rooms; for the guarding of well holes, stairways, elevator shafts; and for the employment of sanitary appliances. In others, where mining is the principal industry, special provision is made for the shoring up of dangerous walls; for ventilation shafts, bore holes, escapement shafts, means of signaling the surface; for the supply of fresh air, and the elimination, as far as possible, of dangerous gases; for safe means of hoisting and lowering cages; for a limitation upon the number of persons permitted to enter a cage; that cages shall be cov-

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ered; and that there shall be fences and gates around the top of shafts, besides other similar precautions.

These statutes have been repeatedly enforced by the courts of the several states; their validity assumed; and, so far as we are informed, they have been uniformly held to be constitutional.

In *Daniels vs. Hilgard*, 77 Ill. 640, it was held that the legislature had power, under the Constitution, to establish reasonable police regulations for the operating of mines and collieries, and that an act providing for the health and safety of persons employed in coal mines, which required the owner or agent of every coal mine or colliery employing ten men or more to make or cause to be made an accurate map or plan of the workings of such coal mine or colliery, was not unconstitutional, and that the question whether certain requirements are a part of a system of police regulations adopted to aid in the protection of life and health was properly one of legislative determination, and that a court should not lightly interfere with such determination, unless the legislature had manifestly transcended its province.

In *Pennsylvania vs. Bonnell*, 8 Phila. 534, a law providing for the ventilation of coal mines, for speaking tubes, and the protection of cages, was held to be constitutional, and subject to strict enforcement.

But, if it be within the power of a legislature to adopt such means for the protection of the lives of its citizens, it is difficult to see why precautions may

not also be adopted for the protection of their health and morals. It is as much for the interest of the state that the public health should be preserved as that life should be made secure. With this end in view, quarantine laws have been enacted in most, if not all, of the states; insane asylums, public hospitals, and institutions for the care and education of the blind established; and special measures taken for the exclusion of infected cattle, rags, and decayed fruit. In other states laws have been enacted limiting the hours during which women and children shall be employed in factories; and while their constitutionality, at least as applied to women, has been doubted in some of the states, they have been generally upheld. Thus, in the case of *Com. vs. Hamilton Mfg. Co.*, 120 Mass. 383, it was held that a statute prohibiting the employment of all persons under the age of eighteen, and of all women laboring in any manufacturing establishment more than sixty hours per week, violates no contract of the commonwealth implied in the granting of a charter to a manufacturing company, nor any right reserved under the constitution to any individual citizen, and may be maintained as a health or police regulation.

Upon the principles above stated, we think the act in question may be sustained as a valid exercise of the police power of the state. The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines, or in the smelting, reduction, or refining of ores or metals. These employments, when too long pursued, the legislature has judged to be detri-

mental to the health of the employees; and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the federal courts.

While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than eight hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, where the operative is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature, or to the influence of noxious gases generated by the processes of refining or smelting.

We concur in the following observations of the Supreme Court of Utah in this connection:

"The conditions with respect to health of laborers in underground mines doubtless differ from those in which they labor in smelters and other reduction works on the surface. Unquestionably the atmosphere and other conditions in mines and reduction works differ. Poisonous gases, dust, and impalpable substances arise and float in the air in stamp mills, smelters, and other works in which ores containing metals, combined with arsenic or other poisonous elements or agencies, are treated, reduced, and refined, and there can be no doubt that prolonged effort, day after day, subject to such conditions and agencies, will produce morbid, noxious, and often deadly effects in the human system. Some organisms and systems will resist and endure such

conditions and effects longer than others. It may be said that labor in such conditions must be performed. Granting that, the period of labor each day should be of a reasonable length. Twelve hours per day would be less injurious than fourteen, ten than twelve, and eight than ten. The legislature has named eight. Such a period was deemed reasonable. . . . The law in question is confined to the protection of that class of people engaged in labor in underground mines, and in smelters and other works wherein ores are reduced and refined. This law applies only to the classes subjected by their employment to the peculiar conditions and effects attending underground mining and work in smelters, and other works for the reduction and refining of ores. Therefore it is not necessary to discuss or decide whether the legislature can fix the hours of labor in other employments. Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety, or comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of the right of that department of government." 46 Pac. 1105.

The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their em-

ployees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently, under the statute, is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age, and competent to contract, does not necessarily deprive the state of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. "The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer."

We have no disposition to criticise the many authorities which hold that state statutes restricting

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the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion upon this subject. It is sufficient to say of them that they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of the health of employees, and there are reasonable grounds for believing that such determination is supported by the facts. The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class. . . .

We are of opinion that the act in question was a valid exercise of police power of the state, and the judgments of the Supreme Court of Utah are therefore affirmed.

Mr. Justice Brewer and Mr. Justice Peckham dissented.

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IN RE JACOBS

(Court of Appeals of New York. January 20, 1885.)

CONSTITUTIONAL LAW—PUBLIC HEALTH—POLICE REGULATION

The act entitled "An act to improve the public health, by prohibiting the manufacture of cigars and preparation of tobacco in any form, in tenement houses, in certain cases," (chap. 272, Laws 1884), held not within the police power, and unconstitutional.

When a health law is challenged as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the courts must be able to see that it has, at least in fact, some relation to the public health, and that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. Under the guise of police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the legislature is not final or conclusive.

(Argued December 17, 1884; decided January 20, 1885.)

Appeal from an order of the General Term of the Supreme Court, first department, reversing an order,

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made at Special Term, which dismissed the writ of habeas corpus obtained by relator, the respondent herein, to inquire into the cause of his detention.

The essential facts appear in the opinion. Cases cited by counsel omitted.

Opinion of the Court, per EARL, J.

The relator Jacobs was arrested on the 14th day of May, 1884, on a warrant issued by a police justice in the city of New York under the act chapter 272 of the Laws of 1884, passed May 12, entitled "An act to improve the public health by prohibiting the manufacture of cigars and preparation of tobacco in any form in tenement-houses in certain cases, and regulating the use of tenement-houses in certain cases." On the evidence of the complainant he was by the justice committed for trial, and thereafter upon his petition, a justice of the Supreme Court granted a writ of habeas corpus, to which a return was made, and upon the hearing thereon the justice made an order dismissing the writ and remanding him to prison. From that order he appealed to the General Term of the Supreme Court, which reversed the order and discharged him from prison, on the ground that the act under which he was arrested was unconstitutional and therefore void. The district attorney on behalf of the people then appealed to this court, and the sole question for our determination is, whether the act of 1884, creating the offense for which the relator was arrested, was a constitutional exercise of legislative power.

The facts as they appeared before the police justice were as follows: The relator at the time of his

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arrest lived with his wife and two children in a tenement-house in the city of New York in which three other families also lived. There were four floors in the house, and seven rooms on each floor, and each floor was occupied by one family living independently of the others, and doing their cooking in one of the rooms so occupied. The relator at the time of his arrest was engaged in one of his rooms in preparing tobacco and making cigars, but there was no smell of tobacco in any part of the house except the room where he was thus engaged.

These facts showed a violation of the provisions of the act which took effect immediately upon its passage and the material portions of which are as follows: "Section 1. The manufacture of cigars or preparation of tobacco in any form on any floor, or in any part of any floor, in any tenement-house is hereby prohibited, if such floor or any part of such floor is by any person occupied as a home or residence for the purpose of living, sleeping, cooking or doing any household work therein. Section 2. Any house, building or portion thereof, occupied as the home or residence of more than three families living independently of one another, and doing their cooking upon the premises, is a tenement-house within the meaning of this act. Section 3. The first floor of said tenement house on which there is a store for the sale of cigars and tobacco shall be exempt from the prohibition provided in section one of this act. Section 5. Every person who shall be found guilty of a violation of this act, or of having caused another to commit such violation, shall be deemed guilty of

a misdemeanor, and shall be punished for every offense by a fine of not less than ten dollars and not more than one hundred dollars or by imprisonment for not less than ten days and not more than six months, or both such fine and imprisonment. Section 6. This act shall apply only to cities having over five hundred thousand inhabitants."

What does this act attempt to do? In form, it makes it a crime for a cigarmaker in New York and Brooklyn, the only cities in the State having a population exceeding 500,000, to carry on a perfectly lawful trade in his own home. Whether he owns the tenement-house or has hired a room therein for the purpose of prosecuting his trade, he cannot manufacture therein his own tobacco into cigars for his own use or for sale, and he will become a criminal for doing that which is perfectly lawful outside of the two cities named—everywhere else, so far as we are able to learn, in the whole world! He must either abandon the trade by which he earns a livelihood for himself and family, or, if able, procure a room elsewhere, or hire himself out to one who has a room upon such terms as, under the fierce competition of trade and the inexorable laws of supply and demand, he may be able to obtain from his employer. He may choose to do his work where he can have the supervision of his family and their help, and such choice is denied him. He may choose to work for himself rather than for a taskmaster, and he is left without freedom of choice. He may desire the advantage of cheap production in consequence of his cheap rent and family help, and of this he is deprived.

In the unceasing struggle for success and existence which pervades all societies of men, he may be deprived of that which will enable him to maintain his hold, and to survive. He may go to a tenement-house, and finding no one living, sleeping, cooking or doing any household work upon one of the floors, hire a room upon such floor to carry on his trade, and afterward some one may commence to sleep or to do some household work upon such floor, even without his knowledge, and he at once becomes a criminal in consequence of another's act. He may go to a tenement-house, and finding but two families living therein independently, hire a room, and afterward by subdivision of the families, or a change in their mode of life, or in some other way, a fourth family begins to live therein independently, and thus he may become a criminal without the knowledge, or possibly the means of knowledge that he was violating any law. It is, therefore, plain that this law interferes with the profitable and free use of his property by the owner or lessee of a tenement-house who is a cigarmaker, and trammels him in the application of his industry and the disposition of his labor, and thus, in a strictly legitimate sense, it arbitrarily deprives him of his property and of some portion of his personal liberty.

The constitutional guaranty that no person shall be deprived of his property without due process of law may be violated without the physical taking of property for public or private use. Property may be destroyed, or its value may be annihilated; it is owned and kept for some useful purpose and it has

no value unless it can be used. Its capability for enjoyment and adaptability to some use are essential characteristics and attributes without which property cannot be conceived; and hence any law which destroys it or its value, or takes away any of its essential attributes, deprives the owner of his property.

The constitutional guaranty would be of little worth, if the legislature could, without compensation, destroy property or its value, deprive the owner of its use, deny him the right to live in his own house, or to work at any lawful trade therein. If the legislature has the power under the Constitution to prohibit the prosecution of one lawful trade in a tenement-house, then it may prevent the prosecution of all trades therein. "Questions of power," says Chief Justice Marshall in *Brown vs. State of Maryland* (12 Wheat. 419), "do not depend upon the degree to which it may be exercised. If it may be exercised at all it must be exercised at will of those in whose hands it is placed." Blackstone in his classification of fundamental rights says: "The third absolute right inherent in every Englishman is that of property which consists in the free use, enjoyment and disposal of all his acquisitions without any control or diminution, save only by the law of the land." (1 Com. 138), in *Pumpelly vs. Green Bay Co.* (13 Wall. 166, 177), Miller, J., says: "There may be such serious interruption to the common and necessary use of property as will be equivalent to a taking within the meaning of the Constitution." In *Wynehamer vs. People* (13 N. Y. 378, 398), Comstock, J., says: "When a law annihilates the value of

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property and strips it of its attributes, by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation, and certainly within the constitutional provision intended expressly to shield personal rights from the exercise of arbitrary power." In *People vs. Otis* (90 N. Y. 48), Andrews, J., says: "Depriving an owner of property of one of its attributes is depriving him of his property within the constitutional provision."

So, too, one may be deprived of his liberty and his constitutional rights thereto violated without the actual imprisonment or restraint of his person. Liberty, in its broad sense as understood in this country, means the right, not only of freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. All laws, therefore, which impair or trammel these rights, which limit one in his choice of a trade or profession, or confine him to work or live in a specified locality, or exclude him from his own house, or restrain his otherwise lawful movements (except as such laws may be passed in the exercise by the legislature of the police power, which will be noticed later), are infringements upon his fundamental rights of liberty, which are under constitutional protection. In *Butchers' Union Co. vs. Crescent City Co.* (111 U. S. 746), Field, J., says: That among the inalienable rights as proclaimed in the Declaration of Independence "is the right of men to pursue any lawful business or vocation in any

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manner not inconsistent with the equal rights of others, which may increase their property or develop their faculties, so as to give them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits which are innocent in themselves, and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same terms. **The right to pursue them without let or hindrance, except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright.** In the same case Bradley, J., says: "I hold that the liberty of pursuit, the right to follow any of the ordinary callings of life, is one of the privileges of a citizen of the United States," of which he cannot be deprived without invading his right to liberty within the meaning of the Constitution. In *Live Stock, etc., Association vs. Crescent City, etc., Company* (1 Abb. (U. S.) 388, 398), the learned presiding justice says: "There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more nor less than the sacred right of labor." In *Wynehamer vs. People*, Johnson, J., says: "That a law which should make it a crime for men either to live in, or rent or sell their houses," would violate the constitutional guaranty of personal liberty. In *Bertholf vs. O'Reilly* (74 N. Y. 509, 515), Andrews, J., says: That one could "be deprived of his liberty in a constitutional sense without

putting his person in confinement," and that a man's right to liberty included "the right to exercise his faculties, and to follow a lawful avocation for the support of life."

But the claim is made that the legislature could pass this act in the exercise of the police power which every sovereign state possesses. That power is very broad and comprehensive, and is exercised to promote the health, comfort, safety and welfare of society. Its exercise in extreme cases is frequently justified by the maxim *salus populi suprema lex est*. It is used to regulate the use of property by enforcing the maxim *sic utere tuo, ut alienum non loedas*. Under it the conduct of an individual and the use of property may be regulated so as to interfere, to some extent, with the freedom of the one and the enjoyment of the other; and in cases of great emergency engendering overruling necessity, property may be taken or destroyed without compensation, and without what is commonly called due process of law. The limit of the power cannot be accurately defined, and the courts have not been able or willing definitely to circumscribe it. But the power, however broad and extensive, is not above the Constitution. When it speaks, its voice must be heeded. It furnishes the supreme law, the guide for the conduct of legislators, judges and private persons, and so far as it imposes restraints, the police power must be exercised in subordination thereto. Judge Cooley, speaking of the regulation by the legislature under the police power of the conduct of corporations holding inviolable charters, says: "The limit to the exercise of the

police power in these cases must be this: the regulations must have reference to the comfort, safety and welfare of society; they must not be in conflict with any of the provisions of the charter, and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations, in fact, and not amendments of the charter in curtailment of the corporate franchise." (Const, Lim. (4th ed.) 719.) In Potter's Dwarris on Statutes, 458, it is said that "the limit to the exercise of the police power can only be this; the legislation must have reference to the comfort, the safety or the welfare of society; it must not be in conflict with the provisions of the Constitution." In *Commonwealth vs. Alger* (7 Cush. 53, 84), Shaw, Ch. J., says, that the police power "was vested in the legislature, by the Constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same. It is much easier to perceive and realize the existence and sources of the power than to mark its limitations or prescribe limits to its exercise." In *Austin vs. Murray* (16 Pick. 121, 126), it is said: The law will not allow the rights of property to be invaded under the guise of a police regulation for the promotion of health, when it is manifest that such is not the object and purpose of the regulation." In *Watertown vs. Mayo* (109 Mass. 315, 319), Colt, J., says: "The

law will not allow rights of property to be invaded under the guise of a police regulation for the preservation of health or protection against a threatened nuisance; and when it appears that such is not the real object and purpose of the regulation, courts will interfere to protect the rights of the citizen." In the Slaughter-house cases (16 Wall. 36, 87), Field, J., says: "All sorts of restrictions and burdens are imposed under the police power, and when these are not in conflict with any constitutional prohibitions or fundamental principles, they cannot be successfully assailed in a judicial tribunal. . . . But under the pretense of prescribing a police regulation, the State cannot be permitted to encroach upon any of the just rights of the citizen which the Constitution intended to secure against abridgment." In *Coe vs. Schultze* (47 Barb. 64), a learned judge speaking of the constitutional limitations upon the police power says: "I am not willing to concede that the legislature can constitutionally declare an act or thing to be a common nuisance, which palpably, according to our present experience or information, is not and cannot be under any circumstances a common nuisance, by the common-law definitions or common-law decisions. I am not willing to conclude that the legislature can constitutionally declare or authorize any sanitary commission or board to declare the keeping or the use, in any way, of sugar or vinegar to be a common nuisance, because the one is sweet and the other sour, or for any other reason. By such an unlimited power it is easy to see that any citizen might be deprived of his property without compensation,

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and without any colorable pretext that the public good required such deprivation." (See, also, *In the Matter of Cheesebrough*, 78 N. Y. 232.)

These citations are sufficient to show that the police power is not without limitations, and that in its exercise the legislature must respect the great fundamental rights guaranteed by the Constitution. If this were otherwise, the power of the legislature would be practically without limitation. In the assumed exercise of the police power in the interest of the health, the welfare or the safety of the public, every right of the citizen might be invaded and every constitutional barrier swept away.

Generally it is for the legislature to determine what laws and regulations are needed to protect the public health and secure the public comfort and safety, and while its measures are calculated, intended, convenient and appropriate to accomplish these ends, the exercise of its discretion is not subject to review by the courts. But they must have some relation to these ends. Under the mere guise of police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the legislature is not final or conclusive. If it passes an act ostensibly for the public health, and thereby destroys or takes away the property of a citizen, or interferes with his personal liberty, then it is for the courts to scrutinize the act and see whether it really relates to and is convenient and appropriate to promote the public health. It matters not that the legislature may in the title to the act, or in its body, declare that it is intended for the improvement of the

public health. Such a declaration does not conclude the courts, and they must yet determine the fact declared and enforce the supreme law. In *Matter of Ryers* (72 N. Y. 1), Folger, J., speaking of the drainage Act then under consideration, says: "The legislature has done no more than the Constitution permitted in providing in general terms a way for the promotion and preservation of the public health. It is still for the judiciary to see to it that each occasion presents the necessity for the work, and that the purpose to be reached is public." In *Town of Lake View vs. Rose Hill Co.* (70 Ill. 191), the court, speaking of the police power, says: "As a general proposition, it may be stated that it is in the province of the lawmaking power to determine whether the exigencies exist calling into exercise this power. What are the subjects of its exercise is clearly a judicial question." Even the power of taxation, which is one of the broadest possessed by the legislature, is not without its limitations, and its action in reference thereto may be scrutinized by the courts; and that which is done under the guise of taxation may be condemned as sheer spoliation and confiscation without due process of law. (*Weismer vs. Village of Douglas*, 64 N. Y. 91; *Stuart vs. Palmer*, 74 id. 183; *People vs. Equitable Trust Co.*, 96 id. 387.) The legislature may condemn or authorize the condemnation of private property for public use, and it may, in the exercise of its discretion, determine when and upon what property the power of eminent domain may be exercised; but its exercise is not beyond the reach of judicial inquiry. Whether or not

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a use is a public one, which will justify the exercise of the power, is a judicial question. It may be difficult sometimes to determine whether a use is public or private. Although the legislature may declare it to be public, that does not necessarily determine its character; it must in fact be public, and if it be not, no legislative fiat can make it so, and any owner of property attempted to be taken for a use really private can invoke the aid of the courts to protect his property rights against invasion. (Rockwell *vs.* Nearing, 35 N. Y. 302; Matter of Townsend, 39 id. 171; Matter of Deansville Cemetery Association, 66 id. 569; Matter of Eureka Basin Warehouse and Manufacturing Co., 96 id. 42.) The general government is one of limited powers particularly specified in the Federal Constitution. But in addition to the powers granted, it is provided in the Constitution that congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Under this provision, congress is not the final judge of what is "necessary and proper," but its laws must have a legitimate end in view, must be within the scope of the Constitution, must be appropriate and plainly adapted to that end, and not prohibited by, but consistent with, the letter and spirit of the Constitution; and whether the laws passed under the implied powers contained in the section cited are of the character mentioned and thus justified, is always open to judicial inquiry. (McCulloch *vs.* Maryland, 4 Wheat. 316, 421; Hepburn *vs.* Griswold, 8 Wall, 603; Legal Tender Cases, 12 id. 457; 110 U. S. 421.)

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If it were for congress to determine when these implied or incidental powers should be exercised, its powers would be without any restraint, and instead of being a body with limited powers, it would, in its own discretion, have general and unlimited power of legislation. "Whatever meaning," says Mr. Madison (1 Ann. of Cong. 1848), "the clause of the Constitution conferring all necessary and proper means to carry into effect the enumerated powers may have, none could be admitted that would give an unlimited discretion to congress." And in *Marbury vs. Madison* (1 Cranch, 137), Chief Justice Marshall says: "To what purpose are limitations committed to writing, if those limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed." These citations are apt to show how the police power may, and how it ought not to be exercised, and how far its exercise is subject to judicial inquiry. A law enacted in the exercise of the police power must in fact be a police law. If it be a law for the promotion of the public health, it must be a health law, having some relation to the public health.

We will now once more recur to the law under consideration. It does not deal with tenement-houses as such; it does not regulate the number of persons who may live in any one of them, or be crowded into one room, nor does it deal with the mode of their construction for the purpose of securing the health and safety of their occupants or of the public gener-

ally. It deals mainly with the preparation of tobacco and the manufacture of cigars, and its purpose obviously was to regulate them. We must take judicial notice of the nature and qualities of tobacco. It has been in general use among civilized men for more than two centuries. It is used in some form by a majority of the men in this State, by the good and bad, learned and unlearned, the rich and poor. Its manufacture into cigars is permitted without any hindrance, except for revenue purposes, in all civilized lands. It has never been said, so far as we can learn, and it was not affirmed even on the argument before us, that its preparation and manufacture into cigars were dangerous to the public health. We are not aware, and are not able to learn, that tobacco is even injurious to the health of those who deal in it, or are engaged in its production or manufacture. We certainly know enough about it to be sure that its manipulation in one room can produce no harm to the health of the occupants of other rooms in the same house. It was proved in this case that the odor of the tobacco did not extend to any of the other rooms of the tenement-house. Mr. Secretary McCulloch in his late annual report to Congress, in which he recommends the removal of the internal tax from tobacco that it might thus be placed upon a footing with other agricultural products, says: "An article which is so generally used and which adds so much to the comfort of the large numbers of our population who earn their living by manual labor, cannot properly be considered a luxury." To justify this law it would not be sufficient that the use of tobacco may

be injurious to some persons, or that its manipulation may be injurious to those who are engaged in its preparation and manufacture; but it would have to be injurious to the public health. This law was not intended to protect the health of those engaged in cigarmaking, as they are allowed to manufacture cigars everywhere except in the forbidden tenement-houses. It cannot be perceived how the cigarmaker is to be improved in his health or his morals by forcing him from his home and its hallowed associations and beneficent influences, to ply his trade elsewhere. It was not intended to protect the health of that portion of the public not residing in the forbidden tenement-houses, as cigars are allowed to be manufactured in private houses, in large factories and shops in the too crowded cities, and in all other parts of the State. What possible relation can cigarmaking in any building have to the health of the general public? Nor was it intended to improve or protect the health of the occupants of tenement-houses. If there are but three families in the tenement-house, however numerous and gregarious their members may be, the manufacture is not forbidden; and it matters not how large the number of the occupants may be if they are not divided into more than three families living and cooking independently. If a store is kept for the sale of cigars on the first floor of one of these houses, and thus more tobacco is kept there than otherwise would be, and the baneful influence of tobacco, if any, is thus increased, that floor, however numerous its occupants, or the occupants of the house, is exempt from the operation of the act.

What possible relation to the health of the occupants of a large tenement-house could cigarmaking in one of its remote rooms have? If the legislature had in mind the protection of the occupants of tenement-houses, why was the act confined in its operation to the two cities only? It is plain that this is not a health law, and that it has no relation whatever to the public health. Under the guise of promoting the public health the legislature might as well have banished cigarmaking from all the cities of the State, or confined it to a single city or town, or have placed under a similar ban the trade of a baker, of a tailor, of a shoemaker, of a woodcarver, or of any other of the innocuous trades carried on by artisans in their own homes. The power would have been the same, and its exercise, so far as it concerns fundamental, constitutional rights, could have been justified by the same arguments. Such legislation may invade one class of rights to-day and another to-morrow, and if it can be sanctioned under the Constitution, while far removed in time we will not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since in all civilized lands regarded as outside of governmental functions. Such governmental interferences disturb the normal adjustments of the social fabric, and usually derange the delicate and complicated ma-

chinery of industry and cause a score of ills while attempting the removal of one.

When a health law is challenged in the courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. This we have not been able to see in this law, and we must, therefore, pronounce it unconstitutional and void. In reaching this conclusion we have not been unmindful that the power which courts possess to condemn legislative acts which are in conflict with the supreme law should be exercised with great caution and even with reluctance. But as said by Chancellor Kent (1 Com. 450): "It is only by the free exercise of this power that courts of justice are enabled to repel assaults and to protect every part of the government and every member of the community from undue and destructive innovations upon their charter rights."

The order should be affirmed.

All concur.

Order affirmed.

APPENDIX V

PURE FOOD BILL

(In the Senate of the United States. January 21, 1904.)
(*Read twice and referred to the Committee on
Manufactures.*)

AN ACT FOR PREVENTING THE ADULTERATION OR MIS-
BRANDING OF FOODS OR DRUGS, AND FOR REGULAT-
ING TRAFFIC THEREIN, AND FOR ALL OTHER
PURPOSES.

*Be it enacted by the Senate and House of Repre-
sentatives of the United States of America in Con-
gress assembled,* That for the purpose of protecting
the commerce in food products and drugs between
the several states and in the District of Columbia
and the territories of the United States and with

<i>Changes Bureau of Chemistry to Bureau of Chemistry and Foods, Charged With Inspection of Food and Drug Products.</i>	foreign countries the Secretary of Agriculture shall organize the bu- reau of chemistry of the Depart- ment of Agriculture into a bureau of chemistry and foods, which shall have the direction of the chemical work of the present bureau of chemistry and of the chemical work of the other executive departments whose respective heads may apply to the Secretary of Agriculture for such collaboration, and which shall also be charged with the inspection of food and
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drug products, as hereinafter provided in this act. The Secretary of Agriculture shall make necessary rules and regulations for carrying out the provisions of this act, under which the director of the bureau of chemistry and foods shall procure from time to time, or cause to be procured, and analyzed, or cause to be analyzed or examined, chemically, microscopically, or otherwise, samples of foods and drugs offered for sale in original unbroken packages in the District of Columbia, in any territory, or in any state other than that in which they shall have been respectively manufactured or produced, or from a foreign country, or intended for export to a foreign country. The Secretary of Agriculture is hereby authorized to employ such chemists, inspectors, clerks, laborers, and other employees as may be necessary to carry out the provisions of this act and to make such publication of the results of the examinations and analyses as he deems proper.

Sec. 2. That the introduction into any state or territory or the District of Columbia from any other state or territory or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of this act, is hereby prohibited; and any person who shall ship or deliver for shipment from any state or territory or the District of Columbia to any other state

Prohibits Importation of Food or Drugs Adulterated or Misbranded.

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or territory or the District of Columbia, or to a foreign country, or who shall receive in any state or territory or the District of Columbia from any other state or territory or the District of Columbia, or foreign country, or who, having received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article so adulterated or misbranded within the meaning of this act, or any person who shall sell or offer for sale in the District of Columbia or the territories of the United States such adulterated, mixed, misbranded, or imitated foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for

<i>Penalty for Dealer.</i>	such offense be fined not exceeding two hundred dollars for the first offense and for each subsequent
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offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court: *Provided, nevertheless,* That no article shall be deemed misbranded or adulterated within the provisions of this act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of all the other provisions of this act.

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Sec. 3. That the director of the bureau of chemistry and foods shall make, or cause to be made, under rules and regulations to be prescribed by the Secretary of Agriculture, examinations of specimens of foods and drugs offered for sale in original unbroken packages in the District of Columbia, in any territory or in any state other than that in which they shall have been respectively manufactured or produced, or from any foreign country, or intended for shipment to any foreign country, which may be collected from time to time in various parts of the country. If it shall appear from any such examination that any of the provisions of this act have been violated, the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis, duly authenticated by the analyst under oath.

Prosecution for Violation.

Sec. 4. That it shall be the duty of every district attorney to whom the Secretary of Agriculture shall report any violation of this act to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such case provided.

DEFINITIONS

Sec. 5. That the term "drug," as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopœia for internal or external use.

Definitions.

The term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or domestic animals, whether simple,

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mixed, or compound. The term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement regarding the ingredients or substances contained in such article, which statement shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, territory, or country in which it is manufactured or produced.

ADULTERATIONS

Sec. 6. That for the purposes of this act an article shall be deemed to be adulterated—

In case of drugs:

First. If when a drug is sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopœia official at the time of the investigation.

Second. If its strength or purity fall below the professed standard under which it is sold.

Third. If it be an imitation of or offered for sale under the name of another article.

In the case of confectionery:

If it contain terra alba, barytes, talc, chrome yellow, or other mineral substances or poisonous colors or flavors, or other ingredients deleterious or detrimental to health.

In the case of food:

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First. If any substance or substances has or have been mixed and packed with it so as to reduce or lower so as to thereby injuriously affect its quality or strength.

Adulterations in Foods.

Second. If any substance or substances has or have been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be an imitation of or offered for sale under the distinctive name of another article.

Fifth. If it be mixed, colored, powdered, or stained in a manner whereby damage or inferiority is concealed.

Sixth. If it contain any added poisonous ingredient which may render such article injurious to health.

Seventh. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so.

Eighth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter

known as articles of food, under their own distinctive names, and not included in definition fourth of this section. Second. In the

Articles Labeled, Branded or Tagged. case of articles labeled, branded, or tagged so as to plainly indicate that they are mixtures, compounds, combinations, imitations, or blends:

Provided, That the same shall be labeled, branded, or tagged so as to show the character and constituents thereof: *And provided further*, That nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or imitation: *Provided further*, That no dealer shall be convicted under the provisions of this act when he is able to prove a written

Guaranty from Manufacturer. guaranty of purity, in a form approved by the Secretary of Agriculture as published in his rules and

regulations, signed by the manufacturer or the party or parties from whom he purchased said articles: *Provided also*, That said guarantor or guarantors reside within the jurisdiction of the United States. Said guaranty shall contain the full name and address of the party or parties making the sale to the dealer, and said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this act: *Provided*, That when in the

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preparation of food products for shipment they are preserved by an external application
Preservatives. applied in such manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise, the provisions of this act shall be construed as applying only when said products are ready for consumption.

Sec. 7. That it shall be the duty of the Secretary of Agriculture to fix standards of food products when advisable for the guidance of
Standards of Food Products. the officials charged with the administration of food laws and for the information of the courts, and to determine the wholesomeness or unwholesomeness of preservatives and other substances which are or may be added to foods, and to aid him in reaching just decisions in such matters he is authorized to call upon the committee on food standards of the Association of Official Agricultural Chemists, and such other experts as he may deem necessary.

Sec. 8. That every person who manufactures or produces for shipment and delivers for transportation within the District of Columbia or any territory, or who manufactures or produces for shipment or delivers for transportation from any state, territory or the District of Columbia, to any other state, territory, or the District of Columbia, or to any foreign country, any drug or article of food, and every person who exposes for sale or delivers to a purchaser in the District of Columbia or any territory any drug or article of food manufactured or produced within said District of Columbia or any

territory, or who exposes for sale or delivers for shipment any drug or article of food received from a state, territory, or the District of Columbia other than the state, territory, or the District of Columbia in which he exposes for sale or delivers such drug or article of food, or from any foreign country, shall furnish within business hours and upon tender and

Manufacturer, Producer or Shipper Must Sell Samples. full payment of the selling price a sample of such drugs or article of food to any person duly authorized by the Secretary of Agriculture to receive the same, and who shall

apply to such manufacturer, producer, or vender, or person delivering to a purchaser, such drug or article of food for such sample for such use in sufficient quantity for the analysis of any such article or articles in his possession.

Sec. 9. That any manufacturer, producer, or dealer who refuses to comply, upon demand, with

Penalty for Refusal to Sell Samples. the requirements of section eight of this act shall be guilty of a misdemeanor, and upon conviction shall

be fined not exceeding one hundred dollars, or imprisonment not exceeding one hundred days, or both. And any person found guilty of manufacturing or offering for sale, or selling, an adulterated, impure, or misbranded article of food or drug in violation of the provisions of this act shall be adjudged to pay, in addition to the penalties hereinbefore provided for, all the necessary costs and expenses incurred in inspecting and analyzing such adulterated articles which said per-

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son may have been found guilty of manufacturing, selling or offering for sale.

Sec. 10. That this act shall not be construed to interfere with commerce wholly internal in any state, nor with the exercise of their police powers by the several states; but foods and drugs fully complying with all the provisions of this act shall not be interfered with by the authorities of the several states when transported from one state to another so long as they remain in original unbroken packages, except as may be otherwise provided by statutes of the United States.

*Act Does Not
Interfere With
Commerce
Wholly Internal
in any State.*

Sec. 11. That any article of food or drug that is adulterated or misbranded within the meaning of this Act, and is transported or being transported from one State to another for sale, or if it be sold or offered for sale in the District of Columbia and the territories of the United States, or if it be imported from a foreign country for sale, or if intended for export to a foreign country, shall be liable to be proceeded against in any district court of the United States, within the district where the same is found and seized for confiscation, by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, within the meaning of this act, the same shall be disposed of as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall

*Condemnation
of Goods.*

not be sold in any state contrary to the laws of that state. The proceedings of such libel cases shall conform as near as may be to proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in such case; and all such proceedings shall be at the suit of and in the name of the United States.

Sec. 12. That the Secretary of Agriculture is authorized to investigate the character and extent of the adulteration of foods, drugs and liquors, and whenever he has reason to believe that articles are being imported from foreign countries which by reason of such adulteration are dangerous to the health of the people of the United States, or of

Authority to Investigate Original Packages by Permission of Secretary of Treasury.

kinds which are forbidden entry into or forbidden to be sold or restricted in sale in the countries in which they are made or from which they are exported, or which shall be falsely labeled in any respect either by the omission of the name of any added ingredient or otherwise, or in regard to the place of manufacture or the contents of the package, shall make a request upon the Secretary of the Treasury for samples from original packages of such articles for inspection and analysis; and the Secretary of the Treasury is hereby authorized to open such original packages and deliver specimens to the Secretary of Agriculture for the purpose mentioned, giving due notice to the owner or consignee of such articles, who may be present and have the right to introduce testimony;

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and the Secretary of the Treasury shall refuse delivery to the consignee of any of such goods which the Secretary of Agriculture reports to him have been inspected and analyzed and found to be dangerous to health, or of kinds which are forbidden entry into or forbidden to be sold or restricted in sale in the countries in which they are made or from which they are exported, or which shall be falsely labeled in any respect either by the omission of the name of any added ingredient or otherwise, or in regard to the place of manufacture or the contents of the package.

Sec. 13. This act shall be in force and effect from and after the first day of September, Anno Domini nineteen hundred and four.

Passed the House of Representatives January 19, 1904.

Attest: A. McDOWELL, *Clerk*.

This bill failed to pass the Senate both in 1904 and 1905.

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